AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 81 Thursday,

No. 241 December 15, 2016

Pages 90675–90948

OFFICE OF THE FEDERAL REGISTER

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

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 81 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 81, No. 241

Thursday, December 15, 2016

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 90772

Animal and Plant Health Inspection Service
NOTICES
Committee Reestablishment:
General Conference Committee of National Poultry Improvement Plan, 90773

Centers for Disease Control and Prevention
NOTICES
Reporting of Pregnancy Success Rates from Assisted Reproductive Technology Programs, 90854

Commerce Department
See Economic Development Administration
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Community Development Financial Institutions Fund
NOTICES
Funding Opportunities:
Qualified Issuer Applications and Guarantee Applications for Community Development Financial Institutions Bond Guarantee Program, 90905–90920

Copyright Office, Library of Congress
PROPOSED RULES
Group Registration of Contributions to Periodicals, 90753
Group Registration of Photographs, 90753
Supplementary Registration, 90753–90754

Defense Department
See Engineers Corps
NOTICES
Arms Sales, 90789–90796
Meetings:
Defense Acquisition University Board of Visitors, 90789

Economic Development Administration
NOTICES
Trade Adjustment Assistance Eligibility; Petitions, 90773–90774

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application and Employment Certification for Public Service Loan Forgiveness, 90820–90821
Grant Application Form for Project Objectives and Performance Measures Information, 90808–90809
Teacher Verification Form for Title II Scholarship Recipients, 90797
Applications for New Awards:
Education Innovation and Research Program: Early-phase Grants, 90809–90820
Education Innovation and Research Program: Expansion Grants, 90797–90808
Education Innovation and Research Program: Mid-phase Grants, 90821–90833

Energy Department
See Federal Energy Regulatory Commission
RULES
Loan Guarantees for Projects that Employ Innovative Technologies, 90699–90712

Engineers Corps
RULES
Danger Zones and Restricted Areas:
SUPSHIP USN, Gulf Coast, Pascagoula, MS, 90722–90723

Environmental Protection Agency
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Air Plan Revisions, Antelope Valley Air Quality Management District, 90754–90758
Maine, New Hampshire, Rhode Island and Vermont; Interstate Transport of Fine Particle and Ozone Air Pollution, 90758–90762
NOTICES
CERCLA Administrative Settlement Agreements:
Scrub-A-Dubb Barrel Co. Superfund Site, Lubbock, Lubbock County, TX, 90840
Chemical Data Reporting:
Requirements for Inorganic Byproduct Chemical Substances, 90843–90848
Cross-Media Electronic Reporting:
Authorized Program Revision Approval, Oregon, 90848–90849
Pesticide Emergency Exemptions:
Agency Decisions and State and Federal Agency Crisis Declarations, 90836–90840
Pesticide Product Registrations:
Receipt of Applications for New Uses, 90842–90843
TSCA Reporting and Recordkeeping Requirements:
Standards for Small Manufacturers and Processors, 90840–90842

Federal Communications Commission
RULES
Maritime Radio Equipment and Related Matters, 90739–90750
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 90849–90852
Meetings, 90852–90853

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 90853

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 90833–90836
Filings:
Pasadena, CA, 90836

Permit Applications:
Energy Resources USA, Inc., 90835

Federal Railroad Administration
NOTICES
Petitions for Waivers of Compliance, 90904
Petitions for Waivers of Compliance:
Beltway Railway of Chicago, 90903–90904
CSX Transportation, 90904–90905

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 90854

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Species:
Black-capped Vireo; Removal from Federal List of Endangered and Threatened Wildlife, 90762–90771
NOTICES
Endangered and Threatened Species:
Permit Applications, 90863–90864

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Medical Devices; Third-Party Review under Food and Drug Administration Modernization Act, 90857–90858
Guidance:
Use of Electronic Informed Consent: Questions and Answers; Institutional Review Boards, Investigators, and Sponsors, 90855–90857

Food and Nutrition Service
RULES
Supplemental Nutrition Assistance Program:
Enhancing Retailer Standards, 90675–90699

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 90921

Forest Service
RULES
National Forest System Land Management Planning, 90723–90739
NOTICES
Meetings:
Eastern Washington Cascades Provincial Advisory Committee, 90773

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
RULES
World Trade Center Health Program:
Amendments to Definitions, Appeals, and Other Requirements, 90926–90947

Homeland Security Department
See U.S. Customs and Border Protection
NOTICES
Environmental Assessments; Availability, etc.:
Establishment and Operations of Office of Biometric Identity Management and Homeland Advanced Biometric Technology, 90862–90863

Industry and Security Bureau
RULES
Addition of Certain Persons to the Entity List, 90712–90715

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Changed Circumstances Review, 90774–90775
Pasta from Turkey: Final Results of Countervailing Duty Administrative Review; 2014, 90775–90776
Determinations of Sales at Less than Fair Value:
Certain Carbon and Alloy Steel Cut-To-Length Plate from France: Correction to Amended Preliminary Determination of Sales at Less Than Fair Value, 90780
Large Residential Washers from People's Republic of China, 90776–90779

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Raw-In-Shell Pistachios from Iran; Full Five-Year Review, 90867–90868
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Air Mattress Bed Systems and Components Thereof, 90869

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Community Oriented Policing Services Application Package, 90869–90870
United States Assumption of Concurrent Federal Criminal Jurisdiction:
Hoopa Valley Tribe, 90870

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Recreational Target Shooting in Sonoran Desert National Monument, AZ, 90865–90866
Public Safety Closures:
Target Shooting on Lake Mountains in Utah County, UT, 90864–90865
San Juan Islands National Monument Advisory Committee, 90866

Library of Congress
See Copyright Office, Library of Congress

National Institutes of Health
NOTICES
Meetings:
Center for Inherited Disease Research Access Committee, 90858–90859
Center for Scientific Review, 90858
National Advisory Council for Biomedical Imaging and Bioengineering, 90858

National Institute of Biomedical Imaging and Bioengineering, 90858

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
South Atlantic Gray Triggerfish; Commercial Accountability Measure and Closure; July through December Season, 90751–90752
NOTICES
Climate Science Special Report, 90784
Draft 2016 Marine Mammal Stock Assessment Reports; Correction, 90782–90783
Endangered and Threatened Species:
Recovery Plan for Oregon Coast Coho Salmon Evolutionarily Significant Unit, 90780–90781
Recovery Plans, 90785–90787
Take of Anadromous Fish, 90783–90785, 90787–90788
Meetings:
Gulf of Mexico Fishery Management Council, 90788–90789
Permits:
Marine Mammals; File No. 20455, 90781–90782

National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Park Service Office of Public Health Disease Reporting and Surveillance System, 90867

National Science Foundation
NOTICES
Meetings:
Astronomy and Astrophysics Advisory Committee, 90871
Meetings; Sunshine Act, 90871
Permit Applications under the Antarctic Conservation Act, 90870–90871

Nuclear Regulatory Commission
NOTICES
Applications:
South Carolina Electric and Gas Co. and South Carolina Public Service Authority; Virgil C. Summer Nuclear Station, Units 2 and 3 Passive Core Cooling System Condensate Return; Exemptions and Combined License Amendments, 90871–90875
Turkey Point Nuclear Plant, Units 6 and 7; Combined License, 90875–90876

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Bats BZX Exchange, Inc., 90895–90896
CBOE Futures Exchange, LLC, 90889–90890
Chicago Board Options Exchange, Inc., 90896–90903
ICE Clear Europe, Ltd., 90891–90893
New York Stock Exchange, LLC, 90893–90895
NYSE Arca, Inc., 90876–90889

State Department
NOTICES
Modification of Iran, North Korea, and Syria Nonproliferation Act Measures Against Russian Entity, 90903

Surface Transportation Board
RULES
Inspection of Records and Related Fees, 90750–90751

Trade Representative, Office of United States
RULES
Freedom of Information Act Policies and Procedures, 90715–90722

Transportation Department
See Federal Railroad Administration

Treasury Department
See Community Development Financial Institutions Fund
See Foreign Assets Control Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 90921–90922

U.S. Customs and Border Protection
NOTICES
Commercial Gaugers and Laboratories; Accreditations and Approvals:
AmSpec Services, LLC, 90860–90861
Intertek USA, Inc., 90859–90862
SEA, Ltd., 90860

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Support of Claim for Service Connection for Post-Traumatic Stress Disorder and for Post-Traumatic Stress Disorder Secondary to Personal Assault, 90922–90923

Separate Parts In This Issue

Part II
Health and Human Services Department, 90926–90947

Reader Aids

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
271.....90675
278.....90675

10 CFR
609.....90699

15 CFR
744.....90712
2004.....90715

33 CFR
334.....90722

36 CFR
219.....90723

37 CFR

Proposed Rules:
201 (3 documents) 90753
202 (3 documents) 90753

40 CFR

Proposed Rules:
52 (2 documents) 90754, 90758

42 CFR
88.....90926

47 CFR
1.....90739
25.....90739
80.....90739
95.....90739

49 CFR
1001.....90750
1002.....90750

50 CFR
622.....90751

Proposed Rules:
17.....90762

Rules and Regulations

Federal Register
Vol. 81, No. 241
Thursday, December 15, 2016

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.

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 278

[FNS–2016–0018]

RIN 0584–AE27

Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)

AGENCY: Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA or the Department).

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS or the Agency) is updating Supplemental Nutrition Assistance Program (SNAP or the Program) regulations pertaining to the eligibility criteria for retail food stores to participate in the Program by finalizing a proposed rule that was published on February 17, 2016. The Agricultural Act of 2014 (the 2014 Farm Bill) amended the Food and Nutrition Act of 2008 (the Act) to increase the requirement that certain SNAP authorized retail food stores have available on a continuous basis at least three varieties of items in each of four staple food categories, to a mandatory minimum of seven varieties. The 2014 Farm Bill also amended the Act to increase, for certain SNAP authorized retail food stores, the minimum number of staple food categories in which perishable foods are required from two to three. This final rule codifies these mandatory requirements.

In addition, FNS is codifying several other discretionary changes to the existing eligibility criteria. The first is to address depth of stock by establishing a minimum of three stocking units per staple food variety. The rule also amends the definitions of ''staple food,'' ''retail food store,'' and ''ineligible firms'', and defines the term ''firm'' as discussed in the **SUPPLEMENTARY INFORMATION**. Finally, this rule allows FNS to consider the need for food access when making a SNAP authorization determination for applicant firms that fail to meet certain authorization requirements and reaffirms FNS's authority to disclose to the public certain information about retailers who have violated SNAP rules.

DATES: *Effective date:* This rule is effective on January 17, 2017.

Implementation dates: See the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Vicky Robinson, Chief, Retailer Management and Issuance Branch (RMIB), Retailer Policy and Management Division (RPMD), Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), 3101 Park Center Drive, Alexandria, Virginia 22302. Ms. Robinson can also be reached by telephone at (703) 305–2476 or by email at *Vicky.Robinson@fns.usda.gov* during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose of the Regulatory Action

In this final rule, FNS is amending SNAP regulations at 7 CFR parts 271 and 278 to clarify and enhance current regulations governing the eligibility of firms to participate in SNAP. This rulemaking also codifies mandatory provisions of the 2014 Farm Bill, as well as other provisions to strengthen current regulations and conform to statutory intent. These changes will improve SNAP households' access to a variety of healthy food options and they reflect the Agency's ongoing commitments to provide vital nutrition assistance to the most vulnerable Americans, protect taxpayer dollars, and build on aggressive efforts to ensure Program integrity. The final rule allows FNS to ensure that firms authorized to participate in SNAP as retail food stores are consistent with and further the purposes of the Program. This final rule reinforces the statutory intent of SNAP—that participants are able to use their benefits to purchase nutritious foods intended for home preparation and consumption. In the interests of preserving SNAP households' food access, minimizing the burden on participating retail food stores and reflective of the many comments received in response to the proposed rule, this final rule has been substantially modified from its proposed form, including to reduce burden on retailers participating in the program and to help retain their participation in the program.

Summary of the Main Provisions & Changes From the Proposed Rule

The proposed rule generated a great deal of interest and concern among a diverse array of Program stakeholders. In consideration of these comments FNS has clarified, modified, or excised several provisions contained in the proposed rule. In summary:

• Definition of ''Staple Food''—Multiple Ingredient Food Items

The proposed language excluding multiple ingredient food items from being counted towards any staple food category has been removed from the final rule.

• Definition of ''Staple Food''—Accessory Food Items

The proposed language has been clarified to specify that ''accessory food items'' are not defined by consumption between meals or package size and that foods with an accessory food main ingredient (*e.g.,* sugar) are considered accessory foods. Specific examples have been added to the amendatory language at 7 CFR 271.2 and a longer list of examples is included in the preamble of the final rule.

• Definition of ''Retail Food Store''—85–15% Prepared Foods Threshold

The proposed language defining ''retail food store'' as a firm with at least 85 percent of its total food sales in items not cooked or heated on-site before or after purchase has been removed from the final rule. However, related to this proposed provision, language was added to existing regulations on ''ineligible firms'' to specify that a firm is ineligible for SNAP authorization if at least 50 percent of its total gross sales come from the sale of hot and/or cold prepared foods, including foods cooked or heated on-site, before or after purchase.

• Definition of ''Retail Food Store''—Co-located Firms

The proposed language regarding co-located businesses was clarified and narrowed to specify that multiple businesses that operate under one roof will only be considered a single firm for purposes of determining SNAP retailer eligibility if the businesses have common ownership, sale of similar food, and shared inventory.

• Definition of ''Retail Food Store''—Depth of Stock

The proposed depth of stock requirement was halved, from six to three stocking units per staple food variety. Additionally, language was added to specify that a firm may not be denied or withdrawn based on certain stocking shortfalls at the time of the Agency inspection if that firm can produce documentation proving that, no more than 21 days prior to the Agency inspection, the firm had ordered and/or received the required stock.

• Definition of ''Retail Food Store''—Breadth of Stock

Per statute, no changes were made to this provision, which increased the number of varieties required per staple food category from three to seven and increased the number of staple food categories required to contain at least one perishable variety from two to three.

• Definition of ''Firm''

No changes were made to this provision which defines the term ''firm''.

• Need for Access

Language was added to this provision to specify that ''need for access'' factors would not be limited to those enumerated in the regulatory language, that ''need for access'' would only be considered for applicant firms that fail to meet certain authorization requirements, and that the consideration of ''need for access'' would be part of the existing SNAP authorization process under 7 CFR 278.1(a).

• Definition of ''Staple Food''—Acceptable Varieties in the Four Staple Food Categories

Language was added to the definition of ''staple food'' to include in the meat, poultry, or fish staple food category three types of plant-based protein sources (beans, peas, and nuts/seeds) as well as plant-based meat analogues (*e.g.,* tofu and seitan) and traditional animal-based protein sources (*e.g.,* chicken and beef). Language was also added to the definition of ''staple food'' to include in the dairy products staple food category plant-based dairy alternatives (*e.g.,* rice milk and soy yogurt). Finally, language was added to the definition of ''staple food'' to specify what constitutes a variety in all four staple food categories. These changes are in keeping with USDA's MyPlate nutrition guidelines, allow retailers more flexibility in stocking sufficient variety in this staple food category and help to ensure that SNAP households will have access to an array of healthy food options that meet diverse dietary needs and preferences.

• Public Disclosure of Firms Sanctioned for SNAP Violations

Language was added to this provision to specify that the public disclosure of firms subject to term sanctions would last for the term of the sanction.

Implementation Dates

The following provisions of this final rule will be implemented on the effective date of this final rule: The definition of ''firm'' provision (*i.e.,* define ''firm'' at 7 CFR 271.2 so as to clarify that it also includes retailers, entities, and stores) and the public disclosure of sanctioned firms provision (*i.e.,* reaffirm at 7 CFR 278.1(q)(5) the Agency's authority and intent to publicly disclose the store and owner name for firms sanctioned for SNAP violations).

The following provisions of this final rule will be implemented for all retailers 120 days after the effective date of this final rule: The co-located firms provision (*i.e.,* establish at 7 CFR 271.2 that establishments that include separate businesses that operate under one roof and share the following commonalities: Ownership, sale of similar foods, and shared inventory are considered to be a single firm) and the prepared foods threshold provision (*i.e.,* establish at 7 CFR 271.2 and 7 CFR 278.1(b)(1)(iv) that firms that have more than 50 percent of their total gross sales in hot and/or cold prepared foods, including foods cooked or heated on-site before or after purchase, shall not qualify).

The stocking provisions of this final rule will be implemented for all new applicant firms and all firms eligible for reinstatement 120 days after the effective date of this final rule and 365 days after the effective date of this final rule for all currently authorized firms. The stocking provisions of this final rule include: The accessory food items provision (*i.e.,* amend at 7 CFR 271.2 and 7 CFR 278.1(b)(1)(ii)(C) the definition of ''staple food'' so as to modify the regulatory definition of ''accessory food items'', to exclude certain items from being counted in any staple food category), the depth of stock provision (*i.e.,* establish at 7 CFR 271.2 and 7 CFR 278.1(b)(1)(ii)(A) the requirement that certain firms must stock at least three stocking units of each staple food variety), the breadth of stock provision (*i.e.,* codify at 7 CFR 271.2 and 7 CFR 278.1(b)(1)(ii)(A) statutory requirements to increase the number of varieties required of certain firms in each of the four staple food category from three to seven and increase the number of staple food categories that must contain at least one perishable staple food variety from two to three), the acceptable varieties provision (*i.e.,* clarify and amend at 7 CFR 271.2 and 7 CFR 278.1(b)(1)(ii)(C) the definition of ''variety'' as it pertains to staple food varieties in the four staple food categories), and the need for access provision (*i.e.,* allow at 7 CFR 278.1(b)(6) the Agency to consider ''need for access'' when a retailer does not meet all of the requirements for SNAP authorization).

As it is used in this document the phrase ''existing policy'' refers to Agency policy in place as of December 15, 2016. Changes to existing policy included in the final rule will be implemented on or after the effective date of the final rule, January 17, 2017, as described above in this section.

Retailer Guidance for Implementation of Final Rule

Many Program stakeholders specifically requested that FNS provide retailers with detailed guidance and training materials on the rule to ensure that all retailers fully understand all of the provisions of the final rule. In addition to the clarifications and lists of examples provided in the preamble of the final rule, FNS will answer retailer inquiries and provide retailers with additional notice, guidance, and training materials during the aforementioned implementation period per 7 CFR 278.1(t). This will include extensive outreach to ensure that the retailer community is provided with sufficient technical assistance to ensure that all firms are adequately informed regarding these changes to SNAP rules.

II. Background

On August 20, 2013, FNS published a notice entitled, ''Request for Information: Supplemental Nutrition Assistance Program (SNAP) Enhancing Retail Food Store Eligibility'' in the **Federal Register** (78 FR 51136). This Request for Information (RFI), which included 14 specific questions, focused on ways to enhance the definitions of ''retail food store'' and ''staple foods'', and overall eligibility requirements to

participate in SNAP, in order to improve access to healthy foods and ensure that only firms that effectuate the purposes of SNAP are authorized to accept SNAP benefits. FNS received a total of 211 comments from a diverse group of commenters, including retailers, academics, trade associations, policy advocates, professional associations, government entities, and the general public. These RFI comments were considered in drafting the proposed rule. A copy of the RFI comment summary can be viewed at *http://www.fns.usda.gov/snap/rfi-retailer-enhancement.*

On February 17, 2016, the Agency published a Notice of Proposed Rulemaking (NPRM) rule in the **Federal Register** (81 FR 8015), in which FNS proposed to amend SNAP regulations at 7 CFR parts 271 and 278 in order to strengthen the criteria for the eligibility of certain SNAP retail food stores utilizing existing authority in the Act and to codify statutory provisions in the 2014 Farm Bill. On April 5, 2016, FNS published a document in the **Federal Register** (81 FR 19500) clarifying certain provisions of the proposed rule and extending the proposed rule's comment period.

The proposed rule included statutory changes to the breadth of stock (seven varieties in each of the four staple food categories and at least one variety of perishable foods in at least three staple food categories) required of certain SNAP retailers which were mandated by the 2014 Farm Bill. Additionally, the rule proposed discretionary changes such as provisions to address depth of stock, amend the definition of ''staple food'', amend the definition of ''retail food store'', and reaffirm the Agency's authority to disclose to the public certain information about retailers who have violated SNAP rules.

The 91-day public comment period ended on May 18, 2016. FNS received 1,284 public comments, including one comment not considered as it was submitted untimely, and reviewed all 1,283 timely public comments when drafting this final rule. Of these 1,283 comments, 23 were considered duplicative or non-germane, 738 or about 58% of all comments were template or form letters, and 522 or about 41% of all comments were unique submissions. Comments were considered duplicative only if the actual submission and submitter were identical to those of a previously received comment (*e.g.,* a comment that was both submitted to the Agency electronically and by mail) and comments were considered non-germane only if the contents of the submission had no relation to the general subject or specific provisions of the proposed rule (*e.g.,* comments referencing other disparate rulemaking actions).

III. Summary of Comments and Explanation of Revisions

Summary of Comments

Of the 1,260 germane and non-duplicative comments considered by FNS, most of the comments received came from retail food store representatives, owners, managers, or employees (901 or about 72% of total public comments). This total was largely comprised of retailer template comments which either repeated boilerplate language verbatim or with minor modifications and/or personalizations. The retailer template comments (henceforth Template A) submitted by the employees and owners of one chain of firms (a national take-and-bake pizzeria chain which claims over 1,300 locations nationally, about 800 of which are currently authorized to participate in SNAP) accounted for more than one quarter of all public comments received and more than one third of all retailer comments received (333 Template A comments, about 26% of total public comments, or about 37% of all retailer comments). The retailer template comments (henceforth Template B) submitted by the employees and owners of another chain of firms (a regional chain of convenience stores which claims over 600 locations, about 550 of which are SNAP authorized firms) accounted for about a seventh of all public comments received and about a fifth of all retailer comments received (183 Template B comments, about 15% of total public comments, or about 20% of all retailer comments). The comments submitted by the owners, operators, or representatives of convenience stores using the template (henceforth Template C) provided by an international convenience store trade association, which professes to represent more than 1,500 supplier company members and 2,100 retailer company members with over 50,000 convenience store locations nationally, accounted for about a ninth of all comments received and about a sixth of all retailer comments received (143 Template C comments, about 11% of total public comments, or about 16% of all retailer comments). Other retailer comment templates accounted for about 3% of total public comments received and about 5% of all retailer comments received (42 other retailer template comments). In total, retailer template comments (701 total retailer template comments) constitute about 78% of all retailer comments (901 total retailer comments) and about 56% of all total comments (1,260 total germane and non-duplicative public comments). The remaining 200 retailer comments were unique submissions (about 16% of total public comments, or about 22% of all retailer comments).

The remaining approximately 28% of comments received included feedback from the following entities: 259 private citizens, 29 industry trade associations, 28 medical practitioners/organizations, 21 advocacy or food access organizations, and 22 governmental entities.

Of the 1,260 germane and non-duplicative public comments received, overall opinions on the rule were mixed. A majority of public comments (about 54% of all germane and non-duplicative public comments) neither wholly opposed, nor wholly supported the rule as proposed. This number includes comments that suggested improvements or modifications to the proposed provisions. About 40% of public comments specifically opposed at least one provision of the proposed rule while not voicing support for any specific provision of the proposed rule or offering any improvements or modifications to the proposed provisions. About 5% of public comments specifically supported at least one provision of the proposed rule while not opposing any specific provision of the proposed rule or offering any improvements or modifications to the proposed provisions. Finally, less than 1% of public comments were considered out of scope (*e.g.,* general comments supporting or opposing the Supplemental Nutrition Assistance Program). Comments from medical practitioners/organizations tended to generally support the proposed rule, while comments from private citizens, advocacy organizations, and governmental entities were generally divided between those in favor and opposed to various provisions of the proposed rule. Industry trade associations, largely representing food retailers, manufacturers, and distributors, generally opposed some provisions of the proposed rule. Analysis of the comments which addressed each of the ten provisions in the proposed rule follows.

Definition of ''Staple Food''—Multiple Ingredient Food Items

This discretionary provision proposed to amend language, at 7 CFR 271.2 and 7 CFR 278.1(b), to exclude multiple ingredient food items from being

counted towards any staple food category. This provision was specifically opposed by more public comments than any other provision in the proposed rule. Based on the strength of the arguments of these comments, FNS has stricken this provision from the final rule. Of the total 1,260 germane and non-duplicative public comments received, 867 comments addressed this provision and 685 comments, or about 54% of all public comments, specifically opposed this provision. About 69% of total retailer commenters and a majority of total industry trade group commenters specifically opposed this provision. Private citizens, medical groups, advocacy organizations, and governmental entities that commented on this provision were generally divided and/or expressed mixed opinions.

About one quarter of the total 1,260 germane and non-duplicative public comments were Template A comments submitted by the owners and employees of a take-and-bake pizzeria chain. This chain relies exclusively on cold pizza, a multiple ingredient food item, for their SNAP eligibility under Criterion B (this criterion requires firms to have 50 percent of total gross retail sales in staple food sales). Template A comments expressed opposition to this provision on the grounds that it would categorically eliminate them from the Program and that multiple ingredient foods such as pizza may be healthy and affordable options for low income Americans. Other retailer template comments, such as Templates B and C from convenience store owners and employees, also opposed this provision on similar grounds.

Many of the retailers opposing the multiple ingredient food items provision were from the convenience store industry. Such commenters pointed out that the exclusion of these products from eligibility towards SNAP Criterion A (under this final rule, Criterion A would require firms to stock on a continuous basis seven varieties in each of the four staple food categories and at least one variety of perishable foods in at least three staple food categories) would substantially increase the difficulty of retailer compliance with concurrent proposed enhancements in the required depth and breadth of stock, given the limited space in convenience stores. For example, one comment, jointly submitted by the international convenience store trade association noted above and a petroleum marketers trade association which professes to represent about half of the chain petroleum retailers nationally, stated that, ''Today, in over 99,000 convenience stores, 75 percent of the items in stock are multiple ingredient items, including mixed fruit cups, frozen vegetable meat medley dinners, or canned soups. To comply with the proposal, these small format retailers would have to completely overhaul their food offerings—and remove items they now sell—to remain eligible to participate in SNAP. This will be quite costly and, for many, will make it too costly to continue participating in SNAP.''

Several retailer commenters also pointed out that, although this change was intended to clear up confusion, it would create more confusion among retailers than under current regulations. As noted by one commenter, an international chain of convenience stores which claims over 50,000 convenience store members in 17 countries including over 7,000 SNAP authorized firms, ''The 'main ingredient' for most items is easily determined from the principal display panel and/or the FDA-mandated ingredients list.''

Currently, per 7 CFR 271.2 and 7 CFR 278.1(b)(ii)(C), multiple ingredient food items are assigned to the staple food category of their main ingredient as determined by FNS. The final rule titled ''Food Stamp Program: Revisions to the Retail Food Store Definition and Program Authorization Guidance'', published in the **Federal Register** on January 12, 2001 (66 FR 2795) was further clarified by Benefits Redemption Division Policy Memorandum 01–04, titled, ''Implementation of Final Retail Store Eligibility Rule'' which was issued on August 14, 2001. In this Agency policy memorandum it is stated that the label may be read to determine the main ingredient in a multiple ingredient food item. The label referenced herein is the ingredients list included at the bottom of the U.S. Department of Health and Human Services (HHS) Food and Drug Administration (FDA) mandated ''Nutrition Facts'' label. On this label, ingredients are listed in descending order of weight (*i.e.,* from most to least). The first listed ingredient, therefore, makes up the largest share of the product's composition.

Long-standing FNS policy, therefore, holds that a multiple ingredient food will be assigned to the staple food category of its first listed ingredient on this label. Under this existing policy, for example, a product such as canned ravioli, with tomato puree as its listed main ingredient, is considered a variety (*i.e.,* tomato) in the vegetables or fruits staple food category. If the main ingredient of a multiple ingredient food item is an accessory food item (*e.g.,* salt), then that multiple ingredient food item is considered an accessory food item. Per Benefits Redemption Division Policy Memorandum 01–04, one exception to this is the accessory food item water. If the main ingredient of a multiple ingredient food item is listed as water, then that item is assigned to the staple food category of its second listed ingredient. Under this existing policy, for example, a product such as canned tomato soup, with water and tomato paste as its first and second listed ingredients respectively, is considered a variety in the vegetables or fruits staple food category (*i.e.,* tomato). If that second ingredient is also an accessory food item (*e.g.,* sugar) then that item is considered an accessory food item.

In general, a majority of industry groups opposed the proposed multiple ingredient provision. In addition to the concerns about higher costs for certain types of retailers and greater retailer confusion, industry groups opposed to this provision were also concerned about the effect of the provision on SNAP households, which industry groups claim rely heavily on multiple ingredient food items as part of their nutritional intake. For example, the international convenience store trade association and the petroleum marketers' trade association jointly stated that, ''multiple ingredient items are often the main sources of nutrition intake for families in the United States''. Likewise, other industry groups, such as those representing the manufacturers and distributors of canned and frozen food products, pointed out that multiple ingredient food items, such as ''frozen pizza rolls'' or ''canned soup'', can be major sources of important nutritional intake for SNAP households and all Americans.

In addition, about two thirds of advocacy groups opposed this provision. Opposed advocacy group commenters were primarily concerned about the importance of multiple ingredient food items in lower-income Americans' diets, especially for those unable to prepare meals at home due to barriers such as time constraints and/or a lack of adequate kitchen facilities. Additionally, some advocacy groups pointed out that some multiple ingredient food items may have high nutritional value. One national, anti-poverty organization stated that:

> USDA has recognized before how essential convenient, multiple ingredient foods are to food purchasing and preparation among SNAP participants. The Thrifty Food Plan is the government market basket upon which SNAP benefit amounts are based. In an effort to be more realistic about the time available for food preparation in the home, USDA incorporated more convenience foods in the

2006 revision of the Thrifty Food Plan . . . Therefore, it is especially odd that many of the foods specifically added to Thrifty Food Plan market baskets in 2006 would be excluded as staple foods under the proposed rule. So long as retail food stores are meeting the increased amounts, variety of staple items and perishable items called by the statute, there is no compelling purpose to exclude multiple ingredient items from counting (as they do under current regulations) under one of the SNAP staple food categories.

However, some advocacy groups, particularly those that are nutrition-focused, supported this provision. A national non-profit consumer advocacy group focused on nutrition and food safety which claims over 750,000 members stated that, ''Disallowing multiple ingredient products to count as a staple food (*e.g.,* pizza because the first ingredient is bread) ensures that the minimum stocking requirements for SNAP authorized retailers are for healthier foods''.

Governmental entities were divided on this provision while medical entities largely supported it. Overall, medical organizations supported this provision on the grounds that it would compel retailers to stock healthier food options and help steer SNAP households away from calorie-dense and nutrient-poor multiple ingredient food items, while also stressing the need for Agency clarification and guidance of this proposed provision prior to implementation. A representative of one such organization, a national, non-profit, medical association which claims 64,000 pediatrician, pediatric medical subspecialist, and pediatric surgical specialist members, noted that ''multiple ingredient foods available in small retail outlets, like pizza and other mixed dish frozen and boxed entrees like casseroles and macaroni and cheese, tend to be higher in sodium, saturated fats, and sugar'' and, as a result, supported this provision adding that ''nutritional profile should be considered in determining how to define a staple food'' and that ''FNS [should] provide clear and comprehensive guidance, at the time the rule is finalized, that includes a list of specific foods that would qualify as staple foods''.

State and local governmental commenters were divided on this provision. One mayor of a city of 600,000 containing over 1,000 SNAP authorized firms supported the provision, stating, ''Currently, the staple food category determination for foods with multiple ingredients is very subjective. We support the proposed changes to the definition of 'staple food' in order to bring clarity to a very complex regulatory process. This is [a] strong policy that will increase the availability of staple foods in all [of the city's] neighborhoods''. Other governmental commenters such as the deputy mayor from another city with a population over 600,000 that contains nearly 500 SNAP authorized firms opposed this provision, stating, ''Disqualifying all prepared foods for SNAP eligibility is risky as these are shelf-stable staples in small stores and can serve as primary foodstuffs for SNAP families.''

While FNS does agree with the commenters that argued that this provision would likely increase healthy options for SNAP participants, the Agency believes that other provisions in this final rule also help increase healthy options for SNAP participants. The proposed rule would have increased the required depth and breadth of staple food stock while simultaneously expanding the list of accessory foods excluded from the definition of ''staple foods'' and excluding multiple ingredient food items from the definition of ''staple foods''. According to some comments received, taken together, these four provisions would constitute an unreasonably burdensome stocking requirement for small format retailers. The Agency shares these concerns and, for these reasons, the proposed multiple ingredient food items provision has been stricken from this final rule. Multiple ingredient food items will, therefore, continue to be assigned to the staple food category of their main listed ingredient per current regulations at 7 CFR 271.2.

Definition of ''Staple Food''—Accessory Food Items

This discretionary provision proposed to amend the definition of ''staple food'' so as to modify the regulatory definition of ''accessory food items'', to exclude certain items from being counted in any staple food category, in keeping with statutory intent. The proposed provision would have expanded the list of accessory foods to include: ''Foods that are generally consumed between meals and/or are generally considered snacks or desserts such as, but not limited to, chips, dips, crackers, cupcakes, cookies, popcorn, pastries, and candy, or food items that complement or supplement meals, such as, but not limited, to coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments, spices, salt and sugar''.

This proposed provision was specifically addressed by a low number of public commenters. Of the total 1,260 germane and non-duplicative public comments received, 65 comments, or approximately 5% of all public comments, specifically addressed this provision. Of the 65 comments that specifically addressed this provision, about half supported it, about a quarter opposed it, and about a quarter were mixed. Less than 1% of total retailer commenters specifically opposed this provision. Industry trade groups and governmental entities that commented on this provision were generally divided and/or expressed mixed opinions. Medical groups, private citizens, and advocacy organizations that commented on this provision were generally supportive. FNS has retained this provision in the final rule with some modifications and clarifications.

Trade group comments, such as a comment jointly submitted by the international convenience store trade association and the trade petroleum marketers' trade association, contended that this provision would incur costs not captured in the Agency's proposed Regulatory Impact Analysis (RIA) and Regulatory Flexibility Analysis (RFA), as accessory food items with higher profit margins, such as potato chips, would need to be replaced with staple food items with lower profit margins, such as fruits and vegetables. This ''opportunity cost'' is a significant contributing factor toward compliance cost estimates, such as the estimate submitted by these trade groups in their joint comment, which exceed the Agency's estimates in the proposed RIA and RFA. The Agency appreciates these comments and has incorporated ''opportunity costs'' into the cost estimates which appear in the final RIA and RFA. This subject is examined in further detail the final rule's RIA and RFA.

This provision was largely supported by advocacy, medical, and local governmental commenters. One State university's nutrition research institute commented that it ''. . . strongly supports . . . [the expansion] of the definition of accessory foods to include chips, desserts, and other snack foods, such that these items are not counted as staple foods.'' Another international, nutrition-focused, non-profit organization professing to represent over 1,000 nutrition professionals stated that, ''We support the proposed changes to the definition of 'accessory foods' that would not qualify as staple foods to include snack foods and dessert items such as chips, dips, cookies, cakes and pastries that are typically consumed between meals.'' A city health department commissioner, representing a city with a population of about 400,000 containing about 450 SNAP authorized firms noted that, ''We

support the proposed changes to the definition of 'accessory foods' that would not qualify as staple foods to include snack foods and dessert items such as chips, dips, cookies, cakes and pastries that are typically consumed between meals. Many of these items have limited nutritional value, and no longer defining them as staple foods will support the intent of this rule to encourage SNAP retailers to stock healthier items.''

The large, international chain of convenience stores stated that it ''. . . does not object to the exclusion of accessory food items from the definition of 'Staple Food' '' and another national food retailer trade association which professes to represent nearly 40,000 retail food stores and 25,000 pharmacies stated it, ''. . . supports this change conceptually, but notes that retailers will need flexibility and considerable guidance from the agency on the revised definition''. Finally, a national trade association for the travel plaza and truck stop industry which professes to represent about 200 corporate members and over 1,200 locations, acknowledges the validity of this provision, but like those that had opposed the provision, cautioned that this could inadvertently eliminate stores ''that market healthy snack food items such as fruit cups, vegetable-and-dip to go packs, and the like'' and argued that this provision should be ''well tailored [to] prevent retailers that sell predominantly accessory foods from qualifying to redeem SNAP benefits''.

Some commenters, however, do not believe that this proposed provision went far enough in excluding unhealthy foods from being counted as staple food items for the purposes of SNAP authorization. One health commissioner from a city of over 8.5 million containing over 10,000 SNAP authorized firms stated that, ''We recommend the USDA avoid defining accessory food items and concentrate efforts in establishing a comprehensive list of staple food items that may be used to determine eligibility to participate in SNAP.''

In their opposition to this provision the comment jointly submitted by the international convenience store trade association and the petroleum marketers' trade association noted that ''[this] provision will drastically limit the number of items that can be counted towards stocking requirements, effectively knocking out nutrient-dense products including healthy 'to go' packs such as apple slices and cheese . . .''. Other trade group commenters also pointed out that this provision should be considered carefully to avoid eliminating from consideration healthy snacks like dried fruit and yogurt cups, stating that such healthy snack foods are integral to the diet of the increasing number of Americans who eat on the go.

As explained in the preamble to the proposed rule, the statutory language defining ''accessory food items'' was explicitly not intended to limit this class of food items to the eight items specifically enumerated in the Section 3(q)(2) of the Act which reads, '' 'Staple foods' do not include accessory food items, *such as* coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices [emphasis added].'' This language, which creates an illustrative and not exhaustive list, reflects the original statutory intent in defining ''accessory food items'' as demonstrated in the legislative history of the Food Stamp Act of 1977. The language in the House Report to the Food Stamp Act of 1977 indicated that Congress had intended its list of accessory food items to be an illustrative, but not exhaustive, list. For example, the House Report stated that ''donut, bakery, and pastry shops which specialize in donuts and sweet baked goods . . . [that] do not do a substantial business in the sale of staple foods, such as bread'' are not authorized to accept and redeem benefits. This language also indicates that Congress did not consider ''donuts, pastries, and other sweet baked goods'' to be staple food items. *See* H. Rep. No. 95–464 at 328 (June 24, 1977). Similarly, even though snacks and ice cream were not specifically listed as accessory food items, the House Report indicated that Congress did not intend for snack-type foods and ice cream to be considered staple foods. *See* H. Rep. No. 95–464 at 328 (June 24, 1977) (''Stores whose primary business is the sale of snack-type foods . . . are not authorized to accept food coupons because they do not enable recipients to obtain a low-cost nutritious diet and, therefore, do not effectuate the purpose of the food stamp program.'' and ''Candy stores and ice cream stores and vendors are not authorized to redeem food stamp coupons because they do not provide recipients with an opportunity to obtain any basic staples.'').

In response to commenters who expressed concern about needing flexibility and additional guidance on this provision, FNS has made some clarification changes to the final rule, has provided a longer list of examples below in Section IV, and will issue additional Agency guidance on this subject following promulgation of this final rule including training materials intended for retail food store owners as needed per 7 CFR 278.1(t). FNS has removed the language ''generally consumed between meals'' in order to address concerns that this language is vague or overly broad. Likewise, the listed example of ''dips'' has been removed as such terminology could be construed to include potential staple foods such as guacamole, hummus, and salsa as noted earlier by commenters. Primarily this provision will expand the definition of ''accessory food items'' to include snack and dessert foods, as well as specified food items that complement or supplement meals. These foods are typically deficient in important nutrients and are high in sodium, saturated fats, and/or sugar. FNS believes that this approach to excluding typically salty and sugary snack and dessert foods from counting towards retailer eligibility is a logical extension of the statute and is consistent with the USDA 2015–2020 Dietary Guidelines for Americans, which recommend limiting calories from added sugars and saturated fats and to reduce sodium. For administrative purposes FNS cannot consider the nutritional contents of individual products, such as different brands of potato chips, on a case by case basis. FNS, therefore, must generalize to a certain extent. As a result FNS has identified a list of accessory foods that generally meet the criteria above. It will help to ensure that SNAP clients will have access to a range of healthy food products intended for home preparation and consumption when they shop with their benefits. This final rule, however, will not change which products are eligible for purchase with SNAP benefits.

The list of accessory foods in the final rule now reads: ''Accessory food items include foods that are generally considered snacks or desserts such as, but not limited to, chips, ice cream, crackers, cupcakes, cookies, popcorn, pastries, and candy, and food items that complement or supplement meals such as, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments, spices, salt, and sugar.''

In response to commenters' concerns regarding the effect of this proposed provision on small portion size products, FNS notes that existing regulations at 7 CFR 278.1(b)(1)(ii)(C) specifically state that the ''package size'' of a product shall not be a determinant of variety. Both an apple and a single-serving package of apple slices would count as the same variety of a staple food item (*i.e.,* apple) in the vegetables or fruits staple food category. Similarly, under existing regulations, both a tub of yogurt and a single-serving yogurt cup are counted as the same variety of staple food item (*i.e.,* yogurt) in the dairy

products staple food category. Therefore, under existing regulations, neither a single-serving package of apple slices nor a single-serving cup of cow milk-based yogurt would be categorized as an accessory food due to its package size. This sentence in 7 CFR 278.1(b)(1)(ii)(C) remained substantively the same in the proposed rule, and nothing in the proposed rule would have classified staple food items sold in ''single-serving'', ''snack-sized'' or ''to-go'' packs as accessory food items simply on the basis of their packaging size.

However, in response to the confusion expressed by many commenters regarding packaging size, clarifying language explicitly stating that items shall not be classified as accessory food items exclusively based on packaging size has been added in 7 CFR 271.2: ''Items shall not be classified as accessory food exclusively based on packaging size . . .'' Small-portion packages of staple food items such as apple slices, grapefruit cups, carrot sticks, cheese slices, celery sticks, yogurt cups, bags of nuts, and hummus will continue to be counted as staple food items in their respective staple food categories.

As described above, some commenters recommended that FNS avoid defining accessory food items and establish a comprehensive list of staple food items and that the Agency further exclude unhealthy food items from being classified as staple foods items. While FNS appreciates the goals of such suggestions, creating a comprehensive list of all staple food items is outside of the intended scope of the Agency's rulemaking action. Per research conducted by the USDA's Economic Research Service (ERS), about 20,000 new food products are introduced into the retail marketplace annually. Therefore, the Agency does not believe it is practical to make an exhaustive list of acceptable staple varieties. However, to address concerns about excluding unhealthy foods items from being classified as staple food items, FNS will be amending the final rule to change existing policy, which has limited ''accessory food items'' to include only the eight products explicitly enumerated in regulations at 7 CFR 271.2. Under existing policy a chocolate hazelnut spread (with the first three listed ingredients of sugar, oil, and hazelnuts, in that order) can currently be considered a staple variety in the vegetables or fruits staple food category (*i.e.,* hazelnuts), for example. The accessory food items provision will change this policy such that any food product with an accessory food main ingredient (with the previously mentioned exception of ''water'') will also be considered an accessory food item itself. To revise existing policy, the final rule provides that, ''A food product containing an accessory food item as its main ingredient shall be considered an accessory food item.''

Because the existing regulations and standing policy on accessory foods has resulted in potato chips being counted as a variety in the vegetables or fruits staple food category (*i.e.,* potatoes) and pork rinds being counted as a variety in the meat, poultry, or fish staple food category (*i.e.,* pork), this final rule will amend the definition of staple food in 7 CFR 271.2 to read as set forth in the regulatory text of this rule. The final rule now provides that accessory food items include foods that are generally considered snacks or desserts such as, but not limited to chips, ice cream, crackers, cupcakes, cookies, popcorn, pastries, and candy, and other food items that complement or supplement meals, such as, but not limited to coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments, spices, salt, and sugar. The final rule further clarifies that items shall not be classified as accessory food exclusively based on packaging size but rather based on the aforementioned definition and as determined by FNS, consistent with the guidance in this preamble and/or with future guidance. Additionally, the final rule provides that a food product containing an accessory food item as its main ingredient shall be considered an accessory food item and that accessory food items shall not be considered staple foods for purposes of determining the eligibility of any firm. This provision will be implemented for all new applicant firms and all firms eligible for reinstatement 120 days after the effective date of this final rule and 365 days after the effective date of this final rule for all currently authorized firms.

Definition of ''Retail Food Store''—85–15% Prepared Foods Threshold

This discretionary provision proposed to redefine ''retail food store'' so as to consider firms that had more than 15% of their total food sales coming from the sale of food items that were cooked or heated on-site, before or after purchase, to be restaurants and to exclude such restaurants from the Program. Existing regulations at 7 CFR 278.1(b)(1)(iv) currently consider firms that have more than 50% of their total gross retail sales coming from items that are hot and/or cold prepared foods not intended for home preparation and consumption to be restaurants and exclude such restaurants from the Program. The purpose of the proposed provision was to supplement this existing regulation and exclude from the Program firms that have circumvented Congressional intent and achieved SNAP authorization by selling food cold and offering to cook or heat it on the premises after sale. This proposed provision received a high number of adverse comments and based on the strength of the arguments in these comments, FNS has stricken this provision as proposed from the final rule, instead opting to modify existing regulations at 7 CFR 278.1(b)(1)(iv) to close this loophole. The final rule now provides that firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in (1) foods cooked or heated on-site by the retailer, before or after purchase; and (2) hot and/or cold prepared foods not intended for home preparation and consumption, including prepared foods that are consumed on the premises or sold for carryout, shall not qualify for participation as retail food stores under Criterion A or B.

For example, a firm has $100,000 in total gross retail sales consisting of $60,000 (60%) in nonfood sales and $40,000 (40%) in food sales. The proposed provision would have considered only the food sales for the purposes of the threshold. Under the proposed provision, therefore, this example firm would be considered a restaurant if more than $6,000 (15% of $40,000) of its sales came from the sale of food items that are were cooked or heated on-site, before or after purchase. The final provision, however, considers total gross retail sales rather than only total food sales. Under this final provision, therefore, this example firm could never be considered a restaurant because more than 50% of the firm's total gross retail sales come from nonfood sales. Under this final provision a firm with $100,000 in total gross retail sales could only be considered a restaurant and excluded from the Program if more than $50,000 of its sales came from the sale of foods cooked or heated on-site, before or after purchase, and the sale of hot and/or cold prepared foods not intended for home preparation and consumption.

It should be noted that existing policy, the proposed rule, and the final rule do not impact the restaurants authorized by SNAP State Agencies to participate in the Restaurant Meals Program (RMP). The RMP is a State-option program active in only a handful of States that allows eligible homeless, disabled, and/or elderly SNAP recipients to use their SNAP benefits at

participating restaurants to purchase prepared meals.

Of the total 1,260 germane and non-duplicative public comments received, 513 comments, or about 41% of all public comments, specifically addressed this provision. About 48% of total retailer commenters specifically opposed this provision. Medical groups and governmental entities that commented on this provision were generally divided and/or expressed mixed opinions. Industry trade groups, advocacy groups, and private citizens that commented on this provision were generally opposed.

Commenters identifying as retailers and trade associations generally pointed out that a standard convenience store typically has less than 85% of their total food sales coming from the sale of food items that are not cooked or heated on-site before or after purchase. Such commenters indicated that the average convenience store's hot and/or cold prepared foods sales, including sales of foods that are cooked or heated on-site before or after purchase, are closer to 40% of such firms' total food sales, well beyond the 15% threshold for such hot and/or cold prepared foods sales, including sales of foods that are cooked or heated on-site before or after purchase. Commenters opposing this provision stated that this fact would cause the entire convenience store industry to be categorically ineligible for SNAP authorization.

Many advocacy groups also expressed opposition to this provision, noting that this provision could have a deleterious impact on food access for SNAP households. One national, anti-hunger advocacy group noted that, ''We remain concerned about access for low-income consumers, particularly in food desert areas, and for all shoppers with mobility issues, such as those who are elderly, have disabilities, and/or lack affordable transportation. We caution the Department against setting a threshold that would cause stores to drop out of SNAP and lessen food access, particularly for these particular SNAP consumers.''

Some retailers also noted that determining and documenting what SNAP household customers did with cold food after purchase would be impractical, especially for a firm with an accessible microwave or other heating element. As noted in comments from the international chain of convenience stores:

> . . . the determination of whether an eligible food product constitutes a food heated on-site, post-purchase is not always easy to determine. Each . . . store contains a publicly available microwave available for customer use . . . however, does not monitor its customers' use of store microwaves and does not have a practical method of doing so. Any eligibility requirement which would impose on . . . stores a need to determine, with specificity, which items were heated by customers post-sale would constitute an unreasonable imposition, would unduly disrupt its business and would discourage its customers from using its microwaves. Such monitoring could also have the unintended effect of customers deciding to shop elsewhere. [The company's] stores, especially its franchisees, also lack the technological ability to collect and maintain such data. Imposition of such a requirement would require each store to incur substantial software-related costs and could require the hiring of additional personnel if monitoring of customer activity for SNAP-eligibility purposes is required.

SNAP authorized firms that primarily sell cold food and then offer to cook that food on the premises for customers also specifically opposed this provision. The owner of a SNAP authorized firm that sells primarily prepared meat products commented, ''Unfortunately, I am concerned that the FNS proposed rule would jeopardize my future participation in SNAP. . . . Currently, the business has more than 15% of the total food sales from items that are 'cooked or heated on site before or after purchase.' '' An owner of a SNAP authorized firm that primarily sells pizza, stated opposition to this provision and noted that, ''All of our customers are required to pay $1 more than our posted take-n-bake prices on our menus regardless of method of payment to bake their take-n-bake pizza for them. For SNAP cardholders, the products MUST still be unbaked at the point we swipe their card. [sic]''

Supporters of this provision, namely medical groups and State and local governmental entities, argue that removing restaurants from the Program will benefit SNAP households by eliminating a cost-ineffective source of calorie-dense and nutrient-poor food. One health commission director, representing a city of 600,000 with about 200 SNAP authorized firms, commented, ''We support the effort to uphold the original intent of SNAP to purchase food items intended for home preparation and consumption . . . The proposed rule adds an additional requirement that at least 85 percent of an entity's total food sales must be for items that are not cooked or heated onsite before or after purchase. These enhancements will help ensure that SNAP retailers offer and sell a variety of foods consistent with the language defining a 'retail food store' ''. This position was also echoed by two national advocacy associations, one an organization which claims 37 million members that advocates on behalf of persons over 50, and one that is a non-profit, health advocacy organization.

Several industry groups expressed support for the concept of excluding restaurants as well, but noted that the threshold set by the Agency was not set appropriately in the proposed rule. As noted by the international convenience store chain, ''Without question, [our] stores are not 'restaurants.' Our stores do not have tables or chairs at which our customers can eat and we do not employ servers. Our customers generally leave the store immediately after completing their purchases. None of our stores charge the higher sales tax on restaurant meals found in many jurisdictions. And heated items do not constitute more than 50% of the food items sold in any of our stores.'' A national, independent grocery trade association which claims 1,200 members indicated support for this provision's intent while noting that they ''strongly urge the Agency to lower the proposed threshold.'' Two State retailer associations, one which claims to represent nearly 400 food retailers, wholesalers, and suppliers and one which claims to represent over 800 corporate members operating more than 3,200 retail food stores, also shared this view. Another national trade association federation of 47 State and regional trade associations which claims to represent approximately 8,000 independent petroleum marketers' nationwide quoted the suggestion of one of their members that the threshold be set at ''25% of sites' total gross sales instead of 15% of total food sales.''

Other commenters noted that existing regulations at 7 CFR 278.1(b)(1)(iv) already prohibit the authorization of restaurants with 50% of their gross sales in prepared foods intended for home consumption and saw this proposed provision as redundant and excessive. As the international chain of convenience stores commented, ''FNS's current regulation regarding retailer eligibility provides a clear, common sense distinction between retail food stores (which have less than 50% of total sales in hot or cold prepared, ready-to-eat foods for immediate consumption) and restaurants (which have more than 50% of total sales in hot or cold prepared, ready-to-eat foods for immediate consumption).''

As stated in the proposed rule, the Agency's intent in proposing this provision was to eliminate restaurants which circumvented Congressional intent and achieved SNAP authorization by selling food cold and offering to cook or heat it on the premises after the sale.

For example, a firm accepts SNAP benefits as payment for the purchase of unpackaged, cold, breaded chicken strips. After making such a sale, the firm then offers to fry this chicken for SNAP customers at the cost of one dollar in cash. Such a firm is taking advantage of a loophole in order to sell hot food and operate as a restaurant within the Program. The Agency still believes that firms that primarily sell seafood, pizza, and other food products cold and then offer to heat or cook these products on the premises are operating as restaurants, not retail food stores. The intent of this proposed provision was to correct shortcomings in the existing regulatory language that have allowed for the authorization of these types of ''you-buy-we-fry''-style restaurants and pizza restaurants.

FNS reviewed and considered industry data in response to the concerns from commenters that the 85–15% threshold would have the unintended effect of precluding small-format retail stores with marginal sales in foods cooked or heated on-site, before or after purchase. According to the National Association of Convenience Stores (NACS) State of the Industry (SOI) 2015 Annual Report (*NACS State of the Industry Annual Report Convenience and Fuel Retailing Totals, Trends and Analysis of 2015 Industry Data*) the average convenience store's total gross sales are divided between 68.22% outside (*i.e.,* fuel) sales and 31.78% inside (*i.e.,* foodservice and merchandise) sales. The inside sales of the average convenience store include 35.93% cigarette and other tobacco sales, 7.21% beer sales, 0.87% health and beauty sales. The remaining 55.99% of inside sales (or about 17.79% of total gross sales) are food sales (including 9.22% of inside sales listed under ''All Other''). Of these food sales, about 37.33% come from ''Foodservice.'' ''Foodservice,'' as used in the NACS SOI 2015 Annual Report, includes ''Prepared Food,'' ''Commissary/Packaged Sandwiches,'' ''Hot Dispensed Beverages,'' ''Cold Dispensed Beverages,'' and ''Frozen Dispensed Beverages'' and is defined as follows: ''Foodservice appears in many different forms in the convenience store channel. In some cases, it's a coffee program and a soda fountain, in some it's a roller grill and a condiment bar, and at the other end of the spectrum it's a full-blown made-to-order quick-serve restaurant (QSR) or a well-known branded franchise location.'' Based on this definition, ''Foodservice'' sales appear to include primarily the sale of hot and/or cold prepared foods, including foods cooked or heated on-site before or after purchase, and/or intended for immediate consumption (''Foodservice'' constitutes 20.90% of total inside sales and about 6.64% of total gross sales).

Based on this data, it appears that excluding firms with more than 15% of their food sales in foods cooked or heated on-site before or after purchase would render the average convenience store ineligible to participate in the Program. Furthermore, given that hot and/or cold prepared foods, including foods cooked or heated on-site before or after purchase, constitutes approximately 6.63% of total gross sales, this data indicates that a convenience store with more than 50% of its total gross sales issuing from the sale of hot and/or cold prepared foods is very far outside of industry norms as such sales figures would represent a nearly eightfold greater sales amount in hot and/or cold prepared foods over the average convenience store.

In light of the comments and data, FNS recognizes that this provision, if implemented as proposed, would likely have sweeping and unintended consequences for smaller format firms. The Agency never intended for this provision to categorically preclude convenience stores and other small retail food stores with marginal sales in foods cooked or heated on-site, before or after purchase, from SNAP participation. The stated purpose of this provision was to realign SNAP regulations with statutory intent and exclude restaurants from SNAP.

Therefore, the Agency is narrowing the scope of this provision in the final rule and is instead amending existing regulations at 7 CFR 278.1(b)(1)(iv) to specifically exclude from SNAP participation firms with more than 50 percent of their total gross sales in (1) foods cooked or heated on-site by the retailer before or after purchase; and (2) hot and/or cold prepared foods not intended for home preparation or consumption, including prepared foods that are consumed on the premises or sold for carryout. Conforming edits were also made to 7 CFR 271.2 to the definition of ''retail food store.'' This change to existing regulations will close the existing loophole and align SNAP regulations with Congressional intent to exclude hot food and restaurants from SNAP, while achieving the Agency's stated objectives and addressing concerns that the proposed provision might adversely affect SNAP-authorized firms, such as convenience stores, that do not operate as restaurants.

This provision was never intended to exclude from the Program firms that offer both microwaveable products (*e.g.,* frozen burritos and packages of popcorn) for sale and self-service microwaves for customer use. FNS agrees that is it neither feasible, nor desirable that firms be required to monitor customers' usage of self-service microwaves. Under this final provision microwaveable food products will not be considered foods cooked or heated on-site before or after purchase simply because they *could* be heated after purchase using a self-service microwave and eaten on-site. The final provision specifies that this prepared food threshold will consider those food products that are cooked or heated ''by the retailer''. Such language excludes self-service microwaves from consideration under this provision. The purpose of this provision is to prevent certain types of take-out restaurants from continuing to circumvent Congressional intent to exclude hot food and restaurants from SNAP. While many small format retail food stores may offer some hot and/or cold prepared foods, including foods that are cooked or heated on-site by the retailer before or after purchase, for sale, FNS does not expect this provision to affect convenience stores or similar small format retail food stores as such hot and/or cold prepared foods typically constitute less than 7% of total gross sales for the average convenience store as indicated by industry data, per the aforementioned data in the NACS SOI 2015 Annual Report. While this provision is unlikely to affect the vast majority of retailers, it closes existing loopholes that allowed restaurants to participate in the Program. This provision will be implemented for all retailers 120 days after the effective date of this final rule.

Definition of ''Retail Food Store''—Co-Located Firms

This discretionary provision proposed to redefine the term ''retail food store'' such that multiple co-located businesses sharing certain commonalities would be treated as one firm for the purposes of the Program. As proposed, these commonalities included the sale of similar foods, single management structure, shared space, logistics, bank accounts, employees, and/or inventory. In the proposed rule, FNS specifically sought comments pertaining to any unintended adverse effects of this proposed change and based on the comments that were received this provision was modified to specify that co-located businesses will be treated as one firm by FNS only if they share all of the three following attributes: (1) Ownership; (2) sale of similar or same food products; and (3) shared inventory.

This proposed provision received a moderate number of comments. Of the total 1,260 germane and non-duplicative public comments received, 228 comments, or approximately 18% of all public comments, specifically addressed this provision. About 22% of total retailer commenters specifically opposed this provision. Medical groups that commented on this provision were generally divided and/or expressed mixed opinions while private citizens that commented on this provision were generally supportive. Industry trade groups and advocacy groups that commented on this provision were generally opposed. Support for or opposition to this provision was almost universally concomitant with support for or opposition to the 85–15% prepared foods threshold provision.

Commenters opposing this provision point out that, in conjunction with the 85–15% prepared foods threshold provision, this provision would eliminate from the Program any convenience store co-branded and co-located with a fast food business. The idea of unifying multiple businesses operating ''under one roof'' for purposes of SNAP authorization was criticized by trade groups and retailers who stated that convenience stores and other small format retail food stores operating in shopping malls, travel plazas, strip malls, truck stops, and other shared structures could face elimination from the Program due to their proximity to a totally unaffiliated fast food restaurant. For example, the national truck stop retailer trade association commented, ''As a practical matter, this rule would result in scenarios where [our] members' convenience stores would be ineligible to participate in SNAP simply because they operate adjacent to a separate restaurant. This is arbitrary and contrary to the Program's objectives.'' Overall opposed commenters noted that this provision was overly broad and could result in the unfair treatment of numerous discrete businesses.

The Agency proposed this provision to close a loophole that allows firms to obtain SNAP authorization in contravention of clear statutory intent to exclude restaurants from the Program. For example, a firm applying for SNAP authorization purports to operate two businesses within one building. The first business sells hot pizza, is considered a restaurant by FNS, and is, therefore, ineligible for SNAP authorization. The second business sells only cold pizza and is, therefore, eligible for SNAP authorization under Criterion B. Both businesses sell the same product, are managed and owned by the same individuals, employ the same personnel, operate in the same space, draw from the same inventory, and handle their finances through the same accounting mechanisms. The only difference between the two businesses in this example is that the former does not accept SNAP EBT cards as a form of payment at its designated cash register, while the latter does. Firms obtaining SNAP authorization through such a superficial bifurcation of their businesses are clearly circumventing regulatory and statutory intent to exclude restaurants from the Program in order to sell their food, in this example, pizzas. This provision was proposed in order to close this loophole.

It was never the Agency's intent to treat multiple businesses as one firm because such businesses simply share a roof and an owner. The Agency's intent in the proposed provision was not to consider multiple businesses operating within one truck stop or strip mall as a single firm even if they shared some commonalities, such as management and personnel, so long as they were not also engaged in other common practices as well, such as selling similar or the same products drawn from the same inventory. In the commenter's example, therefore, the presence of a fast food restaurant at a travel plaza would not be likely to have any bearing on the SNAP authorization status of a convenience store located in the same travel plaza.

FNS appreciates the comments from stakeholders and other members of the public that highlight the vagueness and possible unintended effects of the proposed provision. In response to these comments, FNS has clarified and narrowed this provision in the final rule. As it is written in the final rule at 7 CFR 271.2, co-located businesses will be treated as one firm by FNS only if they share all of the three following attributes: (1) Ownership; (2) sale of similar or same food products; and (3) shared inventory. This revision clarifies the vagueness in the proposed language and limits the provision's potential effects in keeping with its intent. This provision will be implemented for all retailers 120 days after the effective date of this final rule.

Definition of ''Retail Food Store''—Depth of Stock

This discretionary provision proposed to address depth of stock by establishing a minimum of six stocking units per staple food variety which certain SNAP authorized firms must offer for sale and normally display in a public area on a continuous basis. This provision received a high number of adverse comments as proposed. Based on the strength of the arguments made in these comments, in the final rule this depth of stock requirement has been halved to a minimum of three stocking units per staple food variety. When combined with the increases in the number of varieties required per staple food category per the breadth of stock provision of the rule, the proposed depth of stock provision would have required a minimum stock for certain SNAP authorized retailers of 168 items, while under the final rule this depth of stock provision requires 84 items.

Of the total 1,260 germane and non-duplicative public comments received, 490 comments, or approximately 39% of all public comments, specifically addressed this provision. About 91% of commenters that addressed this proposed provision opposed it. About 47% of total retailer commenters specifically opposed this provision. Medical groups that commented on this provision were generally supportive while government entities, private citizens, and advocacy organizations that commented on this provision were generally divided and/or expressed mixed opinions.

Most retailers and industry groups opposed this provision on the grounds that the volume of products required by the proposed depth and breadth of stock provisions (*i.e.,* 168 total items) are untenable, as proposed, for small-scale firms to store, display, and stock. As a representative of an American drug store chain which claims over 8,000 locations, about 7,000 of which are SNAP authorized firms, notes, ''Since the 168 items must be continually stocked, a retailer must, in reality, stock far more than 168 items to replace any items that are sold. If a retailer only stocks the required 168 items, they run the risk of non-compliance with Depth of Stock requirements each time an item is sold. We request FNS further clarify this concern.'' Other commenters echoed this concern, stating that they feared the loss of SNAP authorization could occur as the result of selling a single item immediately prior to an FNS inspection.

Under existing regulations at 7 CFR 278.1(a), FNS may require an applicant firm to submit to an inspection, or store visit, as a part of the SNAP authorization process. FNS understands that firms may sell out of certain products or experience temporary disruptions to their supply chain and that such occurrences may result in stocking shortfalls at the time of an Agency store visit. If a firm has insufficient food stocked on hand at the time of this store visit, this does not necessarily preclude the firm from receiving SNAP authorization. Under

existing regulations at 7 CFR 278.1(b)(1)(ii)(A), if it is not clear that the firm met the stocking requirements at the time of a store visit, FNS may offer applicant firms the opportunity to demonstrate their compliance with such requirements through the submission of supporting documentation, such as invoices or receipts, indicating that the firm had recently ordered or received the required staple foods prior to the store visit.

In order to address the concerns and confusion of the commenters, the final rule retains and clarifies the language at 7 CFR 278.1(b)(1)(ii)(A) that affords firms the opportunity to submit supporting documentation in the case of certain stocking shortfalls at the time of an Agency store visit. Additionally, the final rule specifies that such supporting documentation must be dated within 21 days of the store visit. This timeframe of 21 calendar days, or three weeks, reflects the need for retailers to stock perishable staple foods on a continuous basis. Existing SNAP regulations at 7 CFR 278.1(b)(1)(ii)(B) define ''perishable foods'' as items that ''will spoil or suffer significant deterioration in quality within 2–3 weeks.'' This language in 7 CFR 278.1(b)(1)(ii)(A) should not be construed as allowing retailers to submit receipts or invoices to FNS instead of having sufficient stock on hand; the purpose of this language is to acknowledge the realities of the retail marketplace and provide stores that stock sufficient food on a continuous basis some degree of flexibility. The Agency has amended language in this provision at 7 CFR 278.1(b)(1)(ii)(A) to provide that, ''Documentation to determine if a firm stocks a sufficient amount of required staple foods to offer them for sale on a continuous basis may be required in cases where it is not clear that the requirement has been met. Such documentation can be achieved through verifying information, when requested by FNS, such as invoices and receipts in order to prove that the firm had purchased and stocked a sufficient amount of required staple foods up to 21 calendar days prior to the date of the store visit.''

Under this final rule firms that are SNAP authorized under Criterion A must offer for sale and display in a public area (*e.g.,* on store shelves) qualifying staple food items on a continuous basis, evidenced by having no fewer than seven different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each staple variety. This means that, on any given day of operations, such a firm should offer a total of 84 units for sale (3 stocking units · 7 staple varieties · 4 staple food categories = 84 units). Generally Agency determinations of eligibility under Criterion A are guided by store visit documentation of food items that are being offered for sale and displayed in a public area at the time of store visits. So, for example, if a firm is subject to a store visit on the 22nd of January and is found to have only 83 of the required 84 units on hand, then that firm may be afforded the opportunity to provide FNS with supporting documentation. In this case one acceptable form of supporting documentation would be documentation of order or purchase (*e.g.,* an invoice) verifying that the firm placed an order for food stock, including the missing required unit, that is dated no earlier than the 1st of January and no later than the time of the store visit on the 22nd of January. Another acceptable form of supporting documentation would be documentation of receipt or delivery (*e.g.,* a receipt) verifying that the firm received an order of food stock, including the missing required unit, that is dated no earlier than the 1st of January and no later than the time of the store visit on the 22nd of January. If the firm in this example was able to provide an acceptable form of supporting documentation to verify that the firm stocks the required staple food items on a continuous basis (84 items), then the firm would be authorized to participate in SNAP. However, if, for example, a firm had 0 of the required 84 units on hand at the time of store visit, then that firm would not be given the opportunity to submit supporting documentation and would instead be denied SNAP authorization. Such a result clearly demonstrates the firm has not made a reasonable restocking effort.

Some commenters stated that the failure to meet the stocking requirements of this provision at the time of a store visit would result in substantial costs to firms due to the thousands of dollars in fines FNS would levy against such firms as penalties for failing to meet stocking requirements. Under existing regulations, a firm that fails to meet current stocking requirements is denied SNAP authorization or withdrawn from the Program. Once denied or withdrawn, such a firm must wait six months to reapply for SNAP authorization. FNS does not levy fines against retailers who are denied or withdrawn from the Program on the basis of failing to meet the stocking requirements as no statute or regulations currently authorizes FNS to levy fines against retailers for such a failure. Neither the proposed rule, nor the final rule change this fact. This matter is further examined in the final rule's RFA and RIA. A civil penalty (*i.e.,* a civil money penalty or civil monetary penalty) may be applied in lieu of a period of disqualification when a SNAP authorized retailer violates SNAP rules (*e.g.,* sale of cigarettes, tobacco, or alcohol for SNAP benefits).

Another objection raised to this provision pertained to food waste. Some commenters posited that the increase in the number of staple food categories in which perishable food items are required (a statutorily mandated increase from two to three staple food categories) coupled with this depth of stock requirement would result in spoilage, waste, and exorbitant costs to retailers. As noted by a representative of a convenience store distributor company that professes to service over 1,000 retail food stores in six States, ''For many non-perishable items, if [convenience stores] do not sell to the consumer by their expiration date, we can send those products back to the manufacturer who will provide certain types of refunds or will replace product. This practice only applies to select nonperishables and DOES NOT [sic] apply to most products stipulated under the revised FNS rules for SNAP. Perishable items are NEVER [sic] refunded by the manufacturer after the expiration date, so the cost of spoilage on those products is borne completely by the retailer.'' Under the proposed rule this depth of stock provision would require a minimum of 18 perishable food items, while in the final rule this depth of stock provision requires a minimum of nine perishable food items where ''perishable'' is defined by existing regulations at 7 CFR 278.1(b)(1)(ii)(B) to include frozen, fresh, refrigerated, and unrefrigerated food products ''that will spoil or suffer significant deterioration in quality within 2–3 weeks'' such as loaves of bread and potatoes.

Another common objection raised to this provision pertained to space and stocking logistics. Some commenters argued that, in conjunction with the breadth of stock provision, this depth of stock provision would require stocking a quantity of food items that simply exceed the available shelf space at most small format retail food stores. Some commenters also posited that the quantity of perishable food items required by this rule would force small-format firms to purchase additional refrigerator or freezer units for storage. The regional chain of convenience stores which claims over 600 locations, about 550 of which are SNAP

authorized firms, also noted that their ''current stocking needs and inventory management systems [cannot] guarantee a minimum of six units at all times for each of the relevant staple foods. At very least, we would need to revise our planograms and general merchandising strategies, and revisit our hardware and software applications.''

As discussed in the RIA and RFA, estimates of the final rule's impacts on retailers are based on an analysis of a nationally representative sample of 1,392 SNAP authorized small-format firms using data gathered by FNS during store inspections, or store visits. Based on this analysis FNS estimates that the average small-format SNAP authorized firm already stocks over 70% of the stock needed to meet the requirements of this final rule and the average small-format SNAP authorized firm will only need to stock an additional 24 items. Moreover, this analysis indicated that over 98% of small-format SNAP authorized firms currently stock at least nine perishable staple food items and, therefore, that the overwhelming majority of small-format SNAP authorized firms will not need to stock any additional perishable items to meet the requirements in this final rule.

Moreover, as discussed in the RFA, the Agency has analyzed examples of stocking units of qualifying staple food varieties to determine the shelf space that will be occupied by the 84 required items. The Agency estimates that the 84 items required under the final rule would occupy approximately 7,500 cubic inches. These 84 items would occupy about 5.6 square feet of non-refrigerated shelf space. Assuming stores choose to display these non-refrigerated items in a standard manner (*i.e.,* cans of fruit cocktail are shelved three items deep on the shelf) the Agency estimates that these non-refrigerated items would occupy less than two full shelves on standard three-shelf wall shelving unit (84″ height x 48″ length x 16″ depth). While FNS estimates that the refrigerated items would require about 4.3 linear feet of refrigerated shelf space (where a refrigerated shelf has a standard 48″ width), 98 percent of small SNAP-authorized firms already stock sufficient perishable items to meet the perishables requirement. Therefore, FNS considers it unlikely that these stores will need additional refrigerated space beyond their current capacity. Furthermore, as our analysis indicates that most stores will need to add far fewer than 84 items to meet the combined stocking requirements of this rule (24 additional items for the average store); the additional shelf space needed is likely to be well below these estimates.

Since the average small-format SNAP authorized firm already stocks most of the items required under this final rule, FNS contends that this provision, and all of the stocking provisions as a whole, will have a negligible impact on retailers from a spatial and logistical perspective. FNS does not anticipate that requiring firms to utilize a fraction of a shelf to stock an additional 24 items will necessitate any major changes to the planograms or general merchandising strategies of the average small-format retailer.

Certain industry groups, such as that national food retail trade association, had questions regarding the definition of ''stocking unit'' and requested further clarification. Per commenters' requests, a list of examples has been added in Section IV of this document which provides a more complete illustrative, but not exhaustive, examination of what constitutes a stocking unit, and what does not constitute a stocking unit for the purposes of this depth of stock provision.

State and local government entities as well as medical and advocacy groups largely supported this provision, arguing that it would ensure the availability of staple food items on the shelves of SNAP authorized firms. One State public health official, representing a State with a population of 38.8 million that includes over 25,500 SNAP authorized firms, noted that this provision would help by ''increasing the likelihood that these foods will be available to SNAP participants on an ongoing basis'' and a city health department representing 8.5 million people and over 10,000 SNAP authorized firms, noted that, in concert with other provisions, this provision would increase ''the overall diversity of foods stocked on a continuous basis''.

On the other hand, several retailer and industry group commenters stated that the proposed number of required stocking units was simply too great for small format retailers and recommended scaling back the number of stocking units required. The petroleum marketers' trade association federation recommended that, ''[to] help the small retailer the depth of stock should be cut to three items of each of the seven varieties in each staple group''. Another State grocer association, which professes to represent about 400 retailer members, recommended that ''[reconsideration] of six different units of any food item in a store at any given time should also be made, dropping that requirement to a lower number.''

The proposed rule would have increased the required depth and breadth of staple food stock while simultaneously expanding the list of accessory foods excluded from the definition of ''staple foods'' and excluding multiple ingredient food items from the definition of ''staple foods.'' According to some comments received, taken together, these four provisions would constitute an unreasonably burdensome stocking requirement for small format retailers. The Agency acknowledges commenters' concerns about the overall impact of the various provisions in this final rule on small format retailers. However, the Agency also agrees with the comments from some State/local governmental entities and medical groups that having a depth of stock requirement would increase the likelihood of healthy staple food options being available to SNAP recipients. Therefore, FNS is addressing depth of stock by establishing a depth of stock provision, but amending the provision at 7 CFR 278.1(b)(1)(ii)(A) by reducing the required number of stocking units from the proposed six units to three units for each staple food variety in this final rule. Conforming edits were also made to 7 CFR 271.2 to the definition of ''retail food store''. As a result of this change the costs and burdens associated with compliance, perishable spoilage, and shelf space have all been significantly reduced, as reflected in the RIA and RFA. This provision will be implemented for all new applicant firms and all firms eligible for reinstatement 120 days after the effective date of this final rule and 365 days after the effective date of this final rule for all currently authorized firms.

Definition of ''Retail Food Store''—Breadth of Stock

As explained in the preamble to the proposed rule, the 2014 Farm Bill amended the Act to increase the number of staple food varieties required per staple food category from three to seven and to increase the staple food categories required to contain at least one perishable variety from two to three. The proposed rule sought to codify these mandatory requirements from the 2014 Farm Bill. This proposed breadth of stock provision received a moderate number of largely supportive or mixed comments. Of the total 1,260 germane and non-duplicative public comments received, 482 comments, or approximately 38% of total public comments, specifically addressed the increase from three to seven varieties and 288 comments, or about 23% of total public comments, specifically

addressed the increase from two to three categories containing at least one perishable variety. About 56% of comments that specifically addressed the increase from three to seven varieties supported this change while approximately 39% were mixed and about 5% opposed this change. Approximately 90% of comments that specifically addressed the increase from two to three staple food categories containing at least one perishable variety supported this change while about 8% opposed this change and approximately 2% were mixed. Overall less than 1% of total retailer commenters specifically opposed this provision. Medical groups, private citizens, and advocacy groups that commented on this provision were generally supportive while government entities and industry trade groups that commented on this provision were generally divided and/or expressed mixed opinions. This provision was included in the final rule as proposed.

Some governmental, medical, and advocate commenters believed that this provision did not go far enough to ensure that SNAP authorized firms stocked sufficient nutritious food options. Such commenters noted that the SNAP four staple food categories have not kept pace with changes to the USDA's nutritional recommendations, now represented by MyPlate. Such commenters suggested that the vegetables or fruits staple food category should be split into two separate staple food categories—the fruit staple food category and the vegetable staple food category. Such commenters went on to argue that seven varieties should be required for both of these staple food categories (for a total requirement of 14 fruit and vegetable staple food varieties). However, the current four staple food categories are statutorily-mandated in Section 3(q)(1) of the Act and the suggestion of breaking the four staple food categories into five categories would exceed the Agency's statutory authority.

There were other commenters who stated that they expected that retailers would have difficulty reaching seven different varieties in the meat, poultry, or fish and the dairy products staple food categories. As one city mayor, representing a city of 600,000 residents containing 1,000 SNAP authorized firms, pointed out, ''It is difficult to list off seven common varieties of dairy that all types of stores will be able to carry. With the majority of dairy products being perishable, retailers cited lack of cooling infrastructure and cold storage, and difficulty in procuring and selling at an affordable cost as barriers to stock seven varieties of dairy.''

FNS acknowledges the difficulties in reaching seven varieties in certain staple food categories. FNS has amended the final rule to address this concern, along with other comments specifically regarding acceptable varieties in the four staple food categories, as explained in the section on ''Definition of 'Staple Food'—Acceptable Varieties in the Four Staple Food Categories.'' However, because the Act requires that stores authorized under Criterion A stock seven varieties in each of the four staple food categories and at least one variety of perishables in three of those staple food categories; this breadth of stock requirement remains unchanged in the final rule. Conforming edits were also made to 7 CFR 271.2 to the definition of ''retail food store'' and 7 CFR 278.1(b)(1)(ii)(A) to reflect the new breadth of stock requirement. This provision will be implemented for all new applicant firms and all firms eligible for reinstatement 120 days after the effective date of this final rule and 365 days after the effective date of this final rule for all currently authorized firms.

Definition of ''Firm''

This discretionary provision proposed to define ''firm'' so as to clarify that it also includes retailers, entities, and stores. Only one comment, a joint comment submitted by the international convenience store trade association and the petroleum marketers' trade association, specifically addressed this provision. No other retailer commenters specifically opposed this provision.

The one comment that addressed this provision opposed it, stating that ''[to] conflate 'store' with 'firm' may have far-reaching ramifications in terms of licensing, enforcement and other policies'' and further added that ''[conflating] all of these terms will only introduce confusion and lead to unintended results''. The purpose of this provision is to clarify and unify terms that are currently used interchangeably throughout current SNAP regulations. Therefore, the provision at 7 CFR 271.2 remains unchanged in the final rule. This provision will be implemented on the effective date of this final rule.

Need for Access

In the proposed rule FNS proposed to amend 7 CFR 278.1(b) to allow the Agency to consider ''need for access'' when a retailer does not meet all of the requirements for SNAP authorization. FNS does not anticipate that large grocery stores and supermarkets will struggle to meet the stocking requirements of this final rule and FNS only expects to consider ''need for access'' for small format retailers. The purpose of this provision, therefore, is to provide a mechanism to safeguard food access for SNAP recipients especially when an isolated or underserved community relies heavily on small format retail food stores for its grocery shopping needs.

FNS understands that small businesses, such as independent convenience stores, play a vital role in the life of all Americans. These small businesses enrich both urban and rural communities by providing economic prosperity, employment opportunities, and sustainable growth. Very often small format retail food stores are the only venue available in isolated or underserved areas. When drafting this final rule FNS carefully considered the comments from the U.S. Small Business Association Office of Advocacy, as well as the comments submitted by retailers, trade associations, and other commenting entities. Concerns expressed regarding proposed provisions were incorporated into this final rule to minimize potential adverse impacts on small businesses. In addition to these changes, this need for access provision additionally accommodates small businesses and serves as a hedge against potential loss of food access.

With respect to this need for access provision the preamble to the proposed rule stated that ''FNS will consider factors such as distance from the nearest SNAP authorized retailer, transportation options to other SNAP authorized retailer locations, the gap between a store's stock and SNAP required stock for authorized eligibility, and whether the store furthers the purpose of the Program.''

In the proposed rule, FNS specifically requested comments from the public to help FNS refine the factors used to determine whether a retailer is located in an area with significantly limited access to food. This provision received few comments. Of the total 1,260 germane and non-duplicative public comments received, 48 comments, or about 4% of total public comments, specifically addressed this provision. About 71% of comments that specifically addressed this provision suggested modifications or alterations to the proposed factors to be considered under this provision. This provision has been retained with modifications based largely on feedback received in the final rule. Few retailer commenters specifically opposed this provision and all other commenter types were considered mixed.

Some retailers opposed this provision on the grounds that the implementation of this provision would result in inequitable treatment of firms. The regional convenience store chain that commented noted that, ''FNS should not be positioning itself to pick winners and losers in the competitive marketplace.''

As explained in the proposed rule, the 2014 Farm Bill amended Section 9(a) of the Act to allow FNS to consider whether an applicant retailer is located in an area with significantly limited access to food when determining the qualifications of that applicant. The Manager's Statement accompanying the 2014 Farm Bill indicated that the intent of Congress was to encourage the Secretary ''to give broad consideration to the impacts of additional requirements . . . on food access in food deserts or other areas with limited food access.'' H. Conf. Rep. 113–333, at 434 (Jan. 27, 2014). As such, this rule is simply implementing a statutory provision that accommodates areas with significantly limited access to food and retailers in such areas for whom the new stocking standards may be a challenge to meet. FNS specifically requested feedback from the public regarding the proposed change during the comment period. FNS has reviewed all comments and will be refining the provision in the final rule as described below. The Agency also intends to provide Program stakeholders with additional guidance on this provision.

Some retailers and industry trade groups also opposed this provision on the grounds that the proposed provision would create additional delays and administrative burdens for applying firms. The proposed process would allow FNS to waive certain retailer eligibility requirements in instances where applying firms served communities with low food access, as determined by FNS. This provision was always intended to function internally to the Agency and in tandem with the existing SNAP authorization process. FNS does not expect to need any additional information from applicant retailers to assist in the Agency determination. Instead, FNS will rely on information that the Agency currently receives as part of the retailer SNAP authorization process and publicly available information about the area in which the store is located, such as data in the U.S. Census Bureau's American Community Survey (ACS). Therefore, FNS does not anticipate any additional burdens, costs, or delays for retailers that would be created by this provision.

FNS, however, acknowledges the confusion of commenters regarding how this provision would work in practice and how it would affect the timeline for applicant firms' authorization to participate in the Program. As a result, the Agency has clarified the language of this provision in the final rule to specify in 7 CFR 278.1(b)(6) that, ''Such considerations will be conducted during the application process as described in 7 CFR 278.1(a).'' This means that an applicant firm will still receive an authorization determination within 45 days of Agency receipt of a firm's completed application for authorization. During this period need for access will be considered if applicable.

The international convenience store trade association also opposed this provision on grounds of fairness, stating that ''If, for example, only one store in a food desert was SNAP authorized, then it could charge whatever it wanted to a captive consumer base.'' Under the existing SNAP equal treatment provisions at 7 CFR 278.2(b) and 7 CFR 274.7(f), it is prohibited for firms to treat SNAP households differently than any other customers; therefore, retailers are prohibited from charging SNAP customers different prices than non-SNAP customers for the same products. Such predatory retail price gouging practices targeting SNAP customers would, therefore, already be prohibited under existing SNAP regulations.

Some medical and advocacy groups opposed this provision, or the frequent application of this provision, on the grounds that it would allow firms to avoid compliance and deprive communities that depend on small food retail stores as the most convenient and accessible option for purchasing food of a sufficient variety of healthy food options.

However, most retailer, industry, advocacy, governmental, and medical entities that referenced this provision did not support or oppose the provision, but instead suggested additional factors for FNS to consider. Factors suggested for consideration by commenters, beyond those put forward by the Agency in the proposed rule, included, but were not limited to, car ownership rates, public transportation availability, density of SNAP households, regional food availability, regional food prices, and underserved ethnic communities. In order to ensure that the Agency is able to consider some of these suggested factors, and any other factors needed to determine food access, the language of this provision in the final rule at 7 CFR 278.1(b)(6) provides that the factors listed are not exhaustive.

Additionally, the final rule limits the applicability of this provision to applicant firms that fail to meet both Criterion A (*i.e.,* requiring firms to stock qualifying staple food items on a continuous basis, evidenced by having no fewer than seven different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple variety) and Criterion B (*i.e.,* requiring firms to have 50 percent of total gross retail sales in staple food sales), but meet all other SNAP authorization requirements. This change is in keeping with Congressional intent as expressed in the Manager's Statement accompanying the 2014 Farm Bill which indicated that this need for access provision is intended to accommodate retailers in low food access areas for whom the new stocking standards may be a challenge to meet.

The need for access provision in the final rule also clarifies the factors that will be considered by the Agency will pertain to either: (1) Area food access; or (2) firm specific information. Finally, the proposed rule put forward the Agency's intent to implement this need for access provision 60 days after publication of this final rule. As stated earlier, this provision is intended to accommodate small retailers in low food access areas for whom the new stocking standards may be a challenge to meet, therefore this provision will be implemented in tandem with the new stocking standards. This need for access provision, therefore, will be implemented for all new applicant firms and all firms eligible for reinstatement 120 days after the effective date of this final rule and 365 days after the effective date of this final rule for all currently authorized firms.

This language of this provision in the final rule reads as set forth in § 278.1(b)(6) in the regulatory text of this rule. The final rule provides that FNS will consider whether the applicant firm is located in an area with significantly limited access to food when the applicant firm fails to meet Criterion A per 7 CFR 278.1(b)(1)(ii) or Criterion B per 7 CFR 278.1(b)(1)(iii) so long as the applicant firm meets all other SNAP authorization requirements. The final rule further provides that, in determining whether an applicant is located in such an area, FNS will consider access factors such as, but not limited to, the distance from the applicant firm to the nearest currently SNAP authorized firm and the availability of transportation in the vicinity of the applicant firm; and that in determining whether an applicant should be authorized in the Program despite failure to meet Criterion A and Criterion B, FNS will also consider firm factors such as, but not limited to, the extent of the applicant firm's

deficiencies in meeting Criterion A and Criterion B and whether the store furthers the purposes of the Program. Furthermore, the final rule provides that such considerations will be conducted during the application process as described in 7 CFR 278.1(a). This provision will be implemented for all new applicant firms and all firms eligible for reinstatement 120 days after the effective date of this final rule and 365 days after the effective date of this final rule for all currently authorized firms.

Definition of ''Staple Food''—Acceptable Varieties in the Four Staple Food Categories

This discretionary provision proposed to clarify and amend the definition of ''variety'' as it pertains to staple food varieties in the four staple food categories. This provision received an overall mixed response. Of the total 1,260 germane and non-duplicative public comments received, 168 comments, or approximately 13% of all public comments, specifically addressed this provision. About 16% of total retailer commenters specifically opposed this provision. Industry groups largely opposed this provision and other commenter types, such as advocacy, medical, and governmental entities, were generally divided and/or expressed mixed opinions.

Some commenters opposed to this provision stated that this provision did not represent a clarification of existing policy, but rather a radical change in the definition of ''variety,'' especially with respect to the definition of ''variety'' for the meat, poultry, or fish staple food category. A joint comment submitted by the international convenience store trade association and the petroleum marketers' trade association, for example, stated that ''FNS has also proposed to 'clarify' the term 'variety.' But, the proposed rule advances not a clarification but a redefinition''. The national trade association for the travel plaza and truck stop industry echoed this criticism, asserting that FNS policy currently treats multiple formats of turkey and pork as discrete varieties and that the proposed rule would change this supposed standing definition of ''variety'':

> For example, under the Proposed regulatory text, ham and salami would both qualify as one 'variety' of item—'pork'—for purposes of satisfying the seven-variety staple food threshold. Similarly, turkey burgers, sliced turkey, and ground turkey would all qualify as one variety—'turkey' rather than different [sic] three different 'varieties' in the meat, poultry, and fish category. The Proposal's preamble does not attempt to justify *this significant shift in policy* beyond saying that it is designed to 'clear up confusion that may exist in current regulations.' [This organization] is not aware of any such confusion. Indeed, retailer confusion in this area can be sourced entirely to the language in the proposed regulatory text that would treat *all* food items from the same food source (*e.g.,* chicken) as a single 'variety.' There is little policy justification for treating all items from the same food source as a single 'variety' of item. [emphasis added]

Additionally, some commenters criticized the standing definition of ''variety'' specifically in the context of the vegetables or fruits staple food category. As the international convenience store trade association and the petroleum marketers' trade association stated, ''For the vegetable or fruit category, there is no reason why Fuji apples and a jar of applesauce should not be considered different varieties; they are different products from the same food family (apples).''

Under existing SNAP regulations at 7 CFR 278.1(b)(1)(ii)(C) multiple formats of the same base product are not construed as constituting multiple varieties for the purpose of Criterion A eligibility. Canned chicken, frozen chicken, and fresh chicken, for example, are currently considered one variety (chicken) under existing SNAP regulations and policies. That this provision counts multiple formats of one variety (*e.g.,* chicken) as a single variety represents a restatement of existing Agency regulation and policy. In fact, the adoption of the suggestions of the international convenience store trade association and the petroleum marketers' trade association that ''raw chicken breast, refrigerated grilled chicken, or frozen chicken and vegetable stir fry should be considered different varieties'' and that the Agency should ''consider cream cheese and Laughing Cow creamy Swiss cheese to be two different [varieties]'' would represent a reversal of the existing definition of ''variety,'' which in accordance with existing regulations at 7 CFR 278.1(b)(1)(ii)(C), ''. . . is not to be interpreted as different brands, different nutrient values, different varieties of packaging, or different package sizes.'' This existing policy was further examined in the 2001 Benefits Redemption Division (BRD) Policy Memorandum 01–04 which reads, in part, ''Examples of unacceptable varieties includes tomato juice, fresh tomatoes and canned stewed tomatoes in the vegetables or fruits category.'' As is clear from this memorandum, long-standing Agency policy has not considered multiple formats of a product (*e.g.,* raw chicken, canned chicken, and frozen chicken) to constitute discrete staple food varieties.

Variety has been traditionally defined by the Agency based on the essential composition of the food product (*i.e.,* main ingredient), especially in the meat, poultry, or fish and vegetables or fruits staple food categories. Products that share the same primary component (*e.g.,* sliced turkey and ground turkey—turkey) and very similar kinds of products (*e.g.,* McIntosh apples and Empire apples—apples; mozzarella cheese and cheddar cheese—cheeses) have not generally been considered to represent discrete varieties in their respective staple food categories. Main ingredient and product kind have, therefore, been recognized in Agency policy as the primary determinants of variety. The confusion evidenced by retailers' and trade associations' comments regarding the Agency's current definition of ''variety'' may be a reflection of the fact that retail food stores may generally meet the current Criterion A stocking requirements (*i.e.,* three varieties in each of the four staple food categories) without deliberately considering the products needed for compliance. The increase in the number of required varieties from three to seven, which was mandated by the 2014 Farm Bill, has caused retailers to carefully consider what stock would affect compliance and may have resulted in the aforementioned comments and confusions.

Some advocacy and local or State government commenters suggested including plant-based proteins in the meat, poultry, or fish staple food category and plant-based dairy alternatives in the dairy products staple food category. One county health department, representing a county with a population over 750,000 and containing over 700 SNAP authorized firms argued that, ''Additional staple food items that should be considered include eggs and plant-based protein sources such as canned or frozen legumes, unsalted nuts and seeds, and soy products (*i.e.,* tofu). These products could be included in the staple foods category for meat, poultry and fish, re-framed as a protein category.'' As discussed earlier in the context of the breadth of stock provision, there were also commenters who stated that they expected that retailers would have difficulty in reaching seven different varieties in the meat, poultry, or fish and the dairy staple food categories.

In common language usage a ''dairy product'' is understood to mean an edible food product produced from the milk of a mammal, most commonly cow's milk. Some traditional varieties of

dairy include milk, butter, yogurt, and cheese. There are a small number of unique varieties of commonplace dairy products, most of which share the same main ingredient (*i.e.,* milk). Under existing Agency policy, plant-based dairy alternatives are also considered acceptable varieties in the dairy products staple food category. In fact, as proposed, the rule had specified that ''plant-based milk'' was included as a variety in the dairy products staple food category, which would provide additional choices for retailers in meeting the new breadth of stock requirements.

FNS acknowledges the difficulty in reaching seven varieties in this staple food category. Given this reality, as well as the needs of lactose-intolerant consumers, the final rule will consider plant-based dairy products to be varieties in the dairy products staple food category based on their main ingredient (*e.g.,* cow's milk, goat's milk, almond, and soy) and the traditional dairy product for which they are a substitute (*i.e.,* product kind). For example, almond-based milk, soy-based milk, almond-based cheese, and soy-based cheese will each be considered a discrete variety in the dairy products staple food category under the final rule. Additionally, the final rule modifies existing Agency policy to subdivide certain traditional, animal-based dairy varieties into more than one variety. For example, under existing Agency policy cheese is considered one variety while under the final rule cow's milk-based soft cheese and cow's milk-based firm/hard cheese each will be considered discrete varieties.

Additionally, FNS acknowledges the importance of plant-based sources of protein and the potential difficulties in reaching seven varieties in the meat, poultry, or fish staple food category. The final rule, therefore, will modify existing Agency policy to include three varieties of plant-based protein sources (*i.e.,* nuts/seeds, beans, and peas) in the meat, poultry, or fish staple food category. Under current Agency policy such products (*i.e.,* nuts/seeds, beans, and peas) are counted as varieties in the vegetable or fruits staple food category. Under this final rule beans and peas may only be counted once each as a variety in the meat, poultry, or fish staple food category or once each as a variety in the vegetables or fruits staple food category while nuts/seeds may only be counted once as a variety in the meat, poultry, or fish staple food category. This change is in keeping with the nutritional guidance of USDA's MyPlate, which clarifies that, while beans and peas belong to both the protein foods group and the vegetable group, nuts/seeds are only considered to belong to the protein foods group. This means that if a store stocked one jar of peanut butter, one bag of almonds, and one bag of sunflower seeds, this would be considered three stocking units of one variety (*i.e.,* nuts/seeds) which could be counted towards breadth of stock in the meat, poultry, or fish staple food category. In this example, additional units of these or other nut/seed products (*e.g.,* three bags of walnuts) would not further be counted as additional varieties in the meat, poultry, or fish staple food category. This also means that if a firm stocked three bags of dried kidney beans (*i.e.,* beans) and three bags of dried black eyed peas (*i.e.,* peas), then these products would be counted as two varieties towards the breadth of stock in the meat, poultry, or fish staple food category or in the vegetables or fruits staple food category. Beans and peas can each only be counted once as variety in either the meat, poultry, or fish staple food category or in the vegetables or fruits staple food category. This means that if a firm stocked three bags of dried kidney beans, three bags of dried black beans, and three bags of dried pinto beans, then these products could only be counted as one variety (*i.e.,* beans) in either the meat, poultry, or fish staple food category or in the vegetables or fruits staple food category. Likewise, three bags of dried black-eyed peas, three bags of dried split peas, and three bags of dried lentils could only be counted as one variety (*i.e.,* peas) in either the meat, poultry, or fish staple food category or in the vegetables or fruits staple food category. These varieties may not individually be split between staple food categories. This is a departure from the way in which ''variety'' is traditionally defined (*i.e.,* by main ingredient and/or product kind). The reason for this unique exception is that these plant-based proteins are being added to the meat, poultry, or fish staple food category in order to supplement, not supplant, the animal-based proteins for which the category is named. Under this provision firms will not be able meet the breadth of stock requirement for the meat, poultry, or fish staple food category by stocking seven kinds of nuts/seeds, peas, and/or beans, each of these may only be counted once.

Plant-based meat substitutes or analogues, marketed as vegetarian or vegan alternatives to meat, will also be counted as varieties in the meat, poultry, or fish staple food. Varieties of such meat analogues may include, but are not limited to, mycoprotein-based meat analogues, soy-based meat analogues (*e.g.,* tofu or tempeh) and gluten-based meat analogues (*e.g.,* seitan). For such meat analogues variety is assigned in the traditional way (*i.e.,* by main ingredient and by product kind). This means that if a firm stocked three packages of tofu this would be considered one staple variety counting toward the breadth of stock in the meal, poultry, or fish staple food category. In this example, additional units of this or other soy-based meat analogues (*e.g.,* three bags of textured soy protein or three boxes of soy-based vegan hot dogs) would not further be counted as additional varieties in the meat, poultry, or fish staple food category. None of these or any other meat analogues may be counted as a variety in any other staple food category.

Even with the addition of these plant-based varieties into the meat, poultry, or fish staple food category it will be necessary for most firms to stock animal-based varieties to meet the breadth of stock requirement for the meat, poultry, or fish staple food category. For example, if a firm stocked five of the aforementioned plant-based varieties (*e.g.,* three jars of peanut butter [nuts/seeds], three bags of dried black beans [beans], three bags of dried lentils [peas], three packages of tofu [soy-based meat analogue], and three packages of seitan [gluten-based meat analogue]), that firm would still be required to stock at least two more varieties in the meat, poultry, or fish staple food category (*e.g.,* three dozen eggs, three packages of frozen chicken cutlets, and three packages of ham).

These changes better align SNAP regulations with the nutritional guidance of USDA's MyPlate, help to ease the burden of compliance on retail food stores, and serve to increase the availability of healthy food options for low-income Americans.

Some governmental, medical, and advocate commenters believed that additional restrictions should be placed on these required varieties to ensure that a certain number of healthy options were available. For example, two city health departments, one noted earlier as representing a city of 8.5 million, and another representing a city of over 1.5 million containing over 2,300 SNAP authorized firms, argued that, within each staple food category, certain kinds of healthy varieties should be mandated by FNS. Examples of such healthy varieties included low-fat dairy, lean meat, fresh vegetables, and whole grain breads. While FNS does agree with the commenters that argued that such changes would likely increase healthful

options for SNAP participants, the Agency believes that incorporating such additional enhancements to this provision could be overly burdensome on retailers.

Other commenters suggested that variety shortfalls in one or more staple food categories should be allowed to be covered with additional varieties of fruits or vegetables (*e.g.,* a store may stock only five varieties of dairy but nine varieties of fruits and vegetables). While the Agency supports changes that would encourage firms to stock more nutritious products, including fresh fruit and vegetable products, such a change would run counter to statutory requirements of the 2014 Farm Bill that a retailer offer for sale ''a variety of at least 7 foods in each of the 4 categories of staple foods'' and exceeds the Agency's statutory authority.

Some commenters who supported the proposed provision pointed out that a lax definition of ''variety'' would allow stores to skirt variety requirements by stocking seven different formats of one or two kinds of products with the same main ingredient. If a lax definition of ''variety'' were implemented, for example, the variety requirement for the vegetables or fruits staple food category could be satisfied by frozen French fries, powdered mashed potatoes, frozen hash browns, potato chips, canned cream of potato soup, frozen tater tots, and potatoes. FNS concurs with these concerns and will not be altering the proposed definition of ''variety'' to allow for different formats of products with the same main ingredient to count as different varieties.

Under both current Agency regulations and the final rule, ''variety'' is generally defined by product kind or main ingredient for the meat, poultry, or fish and vegetables or fruits staple food categories. This means that chicken, pork, and beef each represent discrete varieties for the former category and that apple, banana, and lettuce each represent discrete varieties for the latter category. Products like Empire apples and McIntosh apples may have different names and slightly different appearances, but they are generally recognized as the same kind of product. For this reason both Empire apples and McIntosh would be not each be considered a discrete variety, but rather the discrete variety is the product kind itself—apples. Likewise although apples, 100% apple juice, and applesauce are different products, they would not each be considered a discrete variety for the purposes of SNAP Criterion A because they share the same main ingredient (*i.e.,* apples). Similarly, although deli-sliced chicken breast, frozen chicken drumsticks, and canned chicken are different products, they would not each be considered a discrete variety for the purposes of SNAP Criterion A because they share the same main ingredient (*i.e.,* chicken). For multiple ingredient food products the first ingredient determines variety such that a frozen microwaveable meal with beef listed as the first ingredient would constitute a variety in the meat, poultry, or fish staple food category (*i.e.,* beef) and a can of ravioli with tomato sauce listed as the first ingredient would constitute a variety in the vegetables or fruits staple food category (*i.e.,* tomato). Most bread or cereals food items sold and consumed in America primarily derive from one or more of the following four grains: Wheat, corn, rice, and/or oats. Based on the limited types of grains and the new breadth of stock requirements, FNS believes it is impractical to strictly define ''variety'' for the purposes of this staple food category by the aforementioned method (*i.e.,* product kind and main ingredient), as is the standard for two of the other staple food categories. As a result, in the bread or cereals staple food category variety is defined by product kind (*i.e.,* bread and other baked or finished grain-based products) or main ingredient (*e.g.,* wheat and oats) as described in Part IV List of Examples below.

Numerous commenters requested additional Agency guidance on what constituted a variety for each of the four staple food categories. In response, a list of examples in Section IV is included in the preamble of the final rule; this list provides 20 examples of varieties in each of the four staple food categories and is intended to be illustrative, not exhaustive. Additionally, the examples listed in the proposed rule have been amended in the final rule to illustrate the intended flexibility for retailers. The changes made to the examples of varieties in the meat, poultry, or fish and the dairy products staple food categories reflect the inclusion of plant-based alternatives. ''Plant-based'' milk has been, for example, removed as a listed example and replaced with almond milk to reflect the inclusion of multiple varieties of plant-based milks (*e.g.,* almond milk, soy milk, and rice milk) in the dairy products staple food category. Additionally, the example ''melon'' was removed and replaced with grapes as melon is not considered a product kind under the definition of ''variety'' but instead includes several discrete varieties (*e.g.,* honeydew and cantaloupe). Likewise, ''breakfast cereal'' was removed and replaced with ''rice'' because the former is not a product kind but instead includes several discrete varieties (*e.g.,* rice-based breakfast cereal and oat-based breakfast cereal).

After review of all comments on this provision, this final rule has largely retained the long-standing Agency definition of ''variety'' and, as described above, modifies the definition of ''variety'' to allow retailers more flexibility in meeting the breadth of stock provision in the dairy, bread and cereals, and meat, poultry, and fish staple food categories. This provision will be implemented for all new applicant firms and all firms eligible for reinstatement 120 days after the effective date of this final rule and 365 days after the effective date of this final rule for all currently authorized firms.

Public Disclosure of Firms Sanctioned for SNAP Violations

This discretionary provision proposed to reaffirm the Agency's authority and intent to publicly disclose the store and owner name for firms sanctioned for SNAP violations. This provision received few comments most of which were supportive. Of the total 1,260 germane and non-duplicative public comments received, 14 comments, or about 1% of total public comments, specifically addressed this provision. About 71% of comments that specifically addressed this provision were supportive while approximately 14% opposed this provision and approximately 14% were generally divided and/or expressed mixed opinions. No retailer commenters specifically opposed this provision, industry trade groups that commented specifically on this provision generally opposed this provision and all other commenter types that commented on this provision were generally supportive.

Three retailer associations (*i.e.,* the international convenience store trade association, the petroleum marketers' trade association, and the national food retailer trade association) opposed the disclosure of this information. One noted that it, ''. . . does not believe that the name of a store owner should be disclosed if the owner name identifies an individual in the store. [Our] members believe that the owner name disclosure is unnecessary and could lead to mental and emotional harm to the owner'' and went on to add, ''FNS should also consider and take into consideration the seriousness of the sanctions imposed and whether there have been multiple violations. Publicizing a store owner's private information for a first time sanction that may have resulted from an inadvertent

violation is unreasonable and clearly extreme.'' Another of these three associations commented, ''There is no provision of the proposed rule, however, that would allow for sanction information to be taken down after the passage of a certain amount of time or in the event a store was sold to another owner or placed under new management.'' A fourth retailer association representing independent grocers seconded this final point and stated the group, ''. . . is not opposed to public disclosure of disqualified retailers who have engaged in fraudulent activity after the appeals process has been exhausted; however [the organization] encourages the Agency to remove or amend the public notice when a store is sold so the new owners are not harmed by this disclosure.''

One State welfare fraud investigator association commented, ''We believe the proposed rule changes (increasing the minimum number of categories in which perishable goods are required, amending the depth of stock, redefining 'Retail Food Store' to exclude restaurants, and, particularly, disclosing information about retailers who have violated SNAP rules) would serve to deter fraud.'' A city health department representing the large city of 8.5 million and over 10,000 SNAP authorized firms also stated that this provision will ''increase integrity efforts against fraud, waste, and abuse in SNAP''.

FNS closely monitors retailers to ensure that they comply with Program rules and regulations. FNS may warn or sanction retailers found violating Program rules. Sanctions can include time-limited or permanent Program disqualification as well as civil penalties. This provision is an essential tool in Agency efforts to combat and deter Program fraud and abuse. For example, the names of retail stores and owners whom have been charged, indicted, or convicted for SNAP retailer fraud by federal, state or local authorities are already disclosed publicly through news releases and other means. This provision reaffirms FNS' authority and intent to disclose the store and owner name for firms sanctioned for SNAP violations. In response to the suggestion that encourages the Agency to remove or amend the public notice when a store is sold so the new owners are not harmed by this disclosure, FNS believes that the public disclosure of both the retail store name and the owner who had been sanctioned would mitigate the potential harm to a new store owner.

FNS, however, acknowledges the concerns of these commenters. As a result, FNS has clarified and narrowed this provision in the final rule. Specifically, the final rule stipulates that information regarding firms sanctioned for SNAP violations will be disclosed by FNS only for the duration of the sanction. Firms sanctioned for lesser offenses (*e.g.,* sale of minor ineligibles) may face term disqualifications as short as six months. FNS agrees that making the owner and store name of such firms indefinitely available to the public is neither necessary nor is it judicious. This provision has been modified such that FNS may disclose the name and address of the store, the owner names(s), and information about the sanction itself for the duration of the sanction. The duration of the sanction lasts until the period of disqualification ends or until the civil penalty has been paid in full, whichever is longer. Additionally, this provision has also been modified such that in the event that a sanctioned firm is assigned a civil penalty in lieu of a period of disqualification, as described in 7 CFR 278.6(a), FNS may continue to disclose this information for as long as the duration of the period of disqualification or until the civil penalty has been paid in full, whichever is longer. The information regarding firms sanctioned with permanent disqualification for offenses such as the trafficking SNAP benefits should and will be made publicly available for the duration of the disqualification (*i.e.,* indefinitely). Program violations that result in a permanent disqualification are serious offenses and the Agency is dedicated to fighting Program fraud and abuse in all forms. FNS agrees with the comments from governmental entities that the public disclosure of the owner and store name of firms that violate Program rules is a powerful deterrent to retailer SNAP fraud. This provision will be implemented on the effective date of this final rule.

IV. List of Examples

Summary of List of Examples

The final rule codifies a statutory provision to increase the required number of staple food varieties in each of the four staple food categories from three to seven and to increase the required number of staple food categories containing at least one perishable foods variety from two to three, where ''perishable foods'' are defined as items which are either frozen, fresh, unrefrigerated, or refrigerated staple food items that will spoil or suffer significant deterioration in quality within three weeks. The final rule also codifies a discretionary provision which clarifies and modifies the definition of acceptable ''variety'' in each of the four staple food categories.

Included below are lists of acceptable varieties in the four staple food categories. Also included is an examination of what constitutes a stocking unit for the purposes of the depth of stock provision. Finally, included is a list of food items which are and are not considered accessory food items. The lists of examples that follow are intended to be illustrative and provide guidance on the final rule. What follows is not to be construed as an exhaustive list of staple food varieties, stocking units, or accessory food items.

The Meat, Poultry, or Fish Staple Food Category

In the meat, poultry, or fish staple food category ''variety'' is generally defined by product kind or main ingredient. This means that chicken, pork, and beef each represent discrete varieties. For multiple ingredient food products the first ingredient determines variety such that a frozen microwaveable meal with beef listed as the first ingredient would constitute a variety in the meat, poultry, or fish staple food category (*i.e.,* beef).

This list of examples serves to provide guidance on acceptable varieties in the meat, poultry, or fish staple food category. The meat, poultry, or fish staple food category now includes varieties of meat analogues (*e.g.,* soy-based meat analogue and gluten-based meat analogue). The meat, poultry, or fish staple food category also now includes three types of plant-based protein staple foods (*i.e.,* nuts/seeds, beans, and peas). Each of these three aforementioned plant-based protein types may only be counted once each as a variety in the meat, poultry, or fish staple food category. Alternatively, beans and peas may instead be counted once each as a variety in vegetables or fruits staple food category. These two types (*i.e.,* beans and peas) may only be counted once each regardless of the staple food category they are counted in. Nuts/seeds may only be counted once as a variety in the meat, poultry, or fish staple food category, but not in the vegetable or fruits staple food category.

What follows is an illustrative, but not exhaustive, list of 20 acceptable varieties in this staple food category. Included parenthetically with each variety are two different examples of food items which would usually fall within that variety. The examples of multiple ingredient food items in this list would be acceptable only if the listed main ingredient would be

considered a variety in the meat, poultry, or fish staple category. Perishable foods are indicated by the presence of an asterisk (*).

Plant-based Protein Types:

1. Nuts/Seeds (*e.g.,* sunflower seeds or peanut butter)
2. Beans (*e.g.,* dried black beans or dried red kidney beans)
3. Peas (*e.g.,* dried lentils or canned split pea soup with a first listed ingredient of split peas)

Meat, Poultry, and Fish:

4. Turkey (*e.g.,* fresh deli sliced turkey* or fresh ground turkey*)
5. Goat (*e.g.,* fresh goat chops* or frozen rack of goat ribs*)
6. Salmon (*e.g.,* packaged smoked salmon or canned salmon)
7. Chicken (*e.g.,* fresh chicken cutlets* or frozen chicken nuggets*)
8. Beef (*e.g.,* fresh ground beef* or beef jerky)
9. Tuna (*e.g.,* fresh albacore tuna steak* or canned albacore tuna fish)
10. Shrimp (*e.g.,* frozen shrimp scampi meal* or fresh cocktail shrimp*)
11. Tilapia (*e.g.,* fresh tilapia filet* or panko breaded frozen tilapia meal*)
12. Crab (*e.g.,* fresh crab cakes* or canned crab meat)
13. Soy-based meat analogue (*e.g.,* tofu* or soy-based vegan chicken alternative*)
14. Chicken eggs (*e.g.,* fresh eggs* or liquid egg whites*)
15. Catfish (*e.g.,* frozen catfish filet* or smoked packaged catfish)
16. Lamb/Mutton (*e.g.,* fresh lamb chops* or fresh ground lamb*)
17. Cod (*e.g.,* frozen cod* or fresh cod*)
18. Pork (*e.g.,* pork loin* or fresh sliced ham*)
19. Duck (*e.g.,* fresh duck* or canned duck)
20. Clams (*e.g.,* frozen clams* or canned clam meat)

The Vegetables or Fruits Staple Food Category

In the vegetables or fruits staple food category ''variety'' is generally defined by product kind or main ingredient. This means that apples, bananas, and lettuce each represent discrete varieties. For multiple ingredient food products the first ingredient determines variety such that a can of ravioli with tomato sauce listed as the first ingredient would constitute a variety in the vegetables or fruits staple food category (*i.e.,* tomato).

What follows is an illustrative, but not exhaustive, list of 20 acceptable varieties in this staple food category. Included parenthetically with each variety are two different examples of food items which would usually fall within that variety. The multiple ingredient food item examples in this list would be acceptable only if the main ingredient is in the vegetables or fruits staple category. Perishable foods are indicated by the presence of an asterisk (*).

1. Potatoes (potatoes* or frozen tater tots*)
2. Oranges (100% orange juice* or fresh oranges*)
3. Tomatoes (canned tomato soup or sun dried tomatoes)
4. Apples (dried apples or pre-cut apple go-packs*)
5. Pumpkin (canned pumpkin or fresh whole pumpkin)
6. Bananas (fresh bananas* or frozen bananas*)
7. Onions (canned onions or fresh onions*)
8. Grapes (fresh grapes* or 100% grape juice)
9. Lettuce (fresh head of iceberg lettuce* or pre-cut and bagged romaine lettuce*)
10. Pineapples (canned pineapple rings or fresh whole pineapple*)
11. Cucumbers (fresh cucumbers* or jarred pickles)
12. Strawberries (fresh strawberries* or frozen strawberries*)
13. Peaches (canned peaches or fresh peaches*)
14. Carrots (fresh whole carrots* or pre-cut carrot stick go-packs*)
15. Grapefruit (fresh whole grapefruit* or grapefruit fruit cup*)
16. Cabbage (*e.g.,* fresh head of cabbage* or jarred kimchi)
17. Artichoke (*e.g.,* fresh artichoke* or canned artichoke hearts)
18. Broccoli (*e.g.,* fresh broccoli* or frozen broccoli florets*)
19. Avocados (*e.g.,* ready-made guacamole* or fresh avocado*)
20. Celery (*e.g.,* pre-cut celery stick go-packs* or fresh whole celery*)

The Dairy Staple Food Category

In common language usage a ''dairy product'' is understood to mean an edible food product produced from the milk of a mammal, most commonly cow's milk. Some traditional varieties of dairy include milk, butter, yogurt, and cheese. There are a small number of unique varieties of commonplace dairy products, most of which share the same main ingredient (*i.e.,* milk). Based on the limited types of commonplace dairy products and the new breadth of stock requirements, it is impractical to define ''variety'' for the purposes of this staple food category based on the main ingredient and it is useful to include plant-based alternatives. Plant-based dairy products will be considered a variety in the dairy products staple food category based on their main ingredient and the traditional dairy product for which they are a substitute. So, for example, almond-based milk, soy-based milk, almond-based cheese, and soy-based cheese will each be considered a discrete variety in the dairy products staple food category under the final rule. Though these items are plant-based, they are recognized as dairy equivalents and therefore, do not count as varieties in the remaining staple food categories. Additionally, some of the traditional types of dairy products have been divided into varieties based on distinct and generally accepted differences. For example, the dairy type cheese has been divided into two discrete varieties: Cow's milk-based soft cheese and cow's milk-based hard/firm cheese based on generally accepted industry norms. What follows is an illustrative, but not exhaustive, list of 20 acceptable varieties in this staple food category. Included parenthetically with each variety are two different examples of food items which would usually fall within that variety. The multiple ingredient food item examples in this list would be acceptable only if the main ingredient is in the dairy products staple category. Perishable foods are indicated by the presence of an asterisk (*).

1. Yogurt (*e.g.,* fresh whole milk French vanilla yogurt* or fresh nonfat peach yogurt*)
2. Soy yogurt (*e.g.,* strawberry soy yogurt* or lite vanilla soy yogurt*)
3. Almond yogurt (*e.g.,* mixed berry almond yogurt* or low-fat plain almond yogurt*)
4. Perishable cow milk (*e.g.,* fresh skim cow milk* or fresh whole cow milk*)
5. Perishable cow kefir (*e.g.,* nonfat fresh blueberry kefir* or fresh banana kefir*)
6. Shelf-stable liquid cow milk (*e.g.,* condensed cow milk or evaporated cow milk)
7. Shelf-stable powdered cow milk (*e.g.,* powdered cow milk or casein/whey powder)
8. Cow milk-based infant formula (*e.g.,* organic, milk-based formula or milk-based, iron-fortified formula)
9. Soy-based infant formula (*e.g.,* iron-fortified, soy-based formula or hypoallergenic, soy-based formula)
10. Butter (*e.g.,* frozen sweet cream butter* or fresh salted butter*)
11. Butter substitute (*e.g.,* margarine or non-dairy spread)
12. Sour cream (*e.g.,* fresh, lite sour cream* or fresh, organic sour cream*)

13. Almond-based milk (*e.g.,* refrigerated almond milk* or shelf-stable almond milk)
14. Soy-based milk (*e.g.,* shelf-stable soy milk or refrigerated soy milk*)
15. Rice-based milk (*e.g.,* shelf-stable rice milk or refrigerated rice milk*)
16. Firm/hard cheese (*e.g.,* fresh deli sliced cheddar cheese* or packaged grated parmesan cheese)
17. Soft cheese (*e.g.,* fresh curd cheese* or pre-wrapped American cheese product slices*)
18. Goat cheese (*e.g.,* fresh honey goat cheese* or fresh plain goat cheese*)
19. Soy-based cheese alternative (*e.g.,* mozzarella-style soy cheese* or American-style soy cheese slices*)
20. Perishable goat milk (*e.g.,* fresh whole goat milk* or fresh low-fat goat milk*)

The Bread or Cereals Staple Food Category

Most bread or cereals food items sold and consumed in America primarily derive from one of the following four grains: Wheat, corn, rice, and/or oats. Based on the limited types of common grains and the new breadth of stock requirements, therefore, it is impractical to define ''variety'' for the purposes of this staple food category based exclusively on the product kind or exclusively on the main ingredient, as is the standard for two of the other staple food categories.

What follows is an illustrative, but not exhaustive, list of 20 acceptable varieties in this staple food category. Included parenthetically with each variety are two different examples of food items which would usually fall within that variety. The multi-ingredient food examples in this list would be acceptable only if the main ingredient is in the bread or cereal staple category. Perishable foods are indicated by the presence of an asterisk (*).

1. Wheat (*e.g.,* whole wheat flour or wheat germ)
2. Corn/maize (*e.g.,* cornmeal or cornbread)
3. Rice (*e.g.,* brown rice or basmati rice)
4. Oats (*e.g.,* oatmeal or honey oat bread*)
5. Barley (*e.g.,* pearled barley or barley meal)
6. Rye (*e.g.,* raw rye or rye bread*)
7. Millet (*e.g.,* millet flour or raw millet)
8. Quinoa (*e.g.,* raw quinoa or quinoa pasta)
9. Teff (*e.g.,* raw teff or injera*)
10. Bread (*e.g.,* a loaf of rye bread* or a loaf of multigrain bread*)
11. Pasta (*e.g.,* gluten-free spaghetti or whole wheat rotini)
12. Baking mixes (*e.g.,* pancake mix or cornbread mix)
13. Tortillas (*e.g.,* corn tortillas* or flour tortillas*)
14. Bagels (*e.g.,* poppy seed bagels* or plain bagels*)
15. Pitas (*e.g.,* low-carb pita* or whole wheat pita*)
16. Cold breakfast cereal (*e.g.,* rice-based cereal or oat-based cereal)
17. English muffins (*e.g.,* whole wheat English muffins* or honey oat English muffins*)
18. Hot breakfast cereal (*e.g.,* cream of wheat or farina)
19. Buns/rolls (*e.g.,* frozen dinner rolls* or hot dog buns*)
20. Infant cereal (*e.g.,* wheat-based infant cereal or oat-based infant cereal)

As an example, a firm could meet the requirements for the bread or cereals staple food category by stocking three loaves of bread, three bags of rice, three boxes of spaghetti, three bags of pitas, three bags of tortillas, three bags of flour and three packages of cornmeal.

Stocking Units

The proposed rule put forward a discretionary provision requiring six stocking units per qualifying staple food variety. The final rule halves that proposed requirement and codifies a discretionary provision that requires three stocking units per qualifying staple food variety. This list of examples serves to define ''stocking unit'' for the purposes of this provision. If a food item would not usually be sold individually, then it does not individually constitute a stocking unit. Such food items are usually sold in bunches, boxes, bags, or packages with a number of other identical items (*e.g.,* a loaf of bread, a bunch of grapes, a carton of eggs, a bag of rice, or a package of sliced turkey). The individual sale of such food items would be impractical given their small individual size. For such products it is the bunch, box, bag, or package that represents one stocking unit. What follows is an illustrative, but not exhaustive, list of such products and their standard stocking unit size.

- Small fruit and berries: A package of blueberries or a package of strawberries
- Leaf vegetables: A head of lettuce or a bunch of collard green leaves
- Stalk/root vegetables: A bunch of carrots or a bunch of celery sticks
- Deli sliced items: A package of turkey slices or a package of cheddar cheese slices
- Grains: A bag or sack of rice or a box of oatmeal

If a food item is usually or often sold singly, then that single unit may constitute one stocking unit. What follows is an illustrative, but not exhaustive, list of such products and their standard stocking unit sizes:

- Hand fruit: A banana or an apple
- Large fruits or vegetables: A watermelon or a pumpkin
- Small portion or single-serving packages: A yogurt cup or a fruit cup

If a food item (*e.g.,* grains, dried fruits, nuts, deli cold cuts, etc.) is stored singly in a common container or unit, but sold to customers by weight, then the standard stocking unit is considered to be one pound. A bulk container containing three pounds of dried cranberries, available to and sold to the customer by weight, therefore, would constitute three stocking units of one variety in the fruit or vegetable staple food category.

If FNS determines that a bunch, box, bag, or package usually sold as a unit has been subdivided into unreasonably small units in order to meet this depth of stock provision, FNS will not consider such food items to constitute a stocking unit for the purposes of this depth of stock provision.

V. List of Accessory Food Items and Examples of Staple Food Items

Accessory Food Items

The final rule codifies a discretionary provision which clarifies the definition of ''staple food''. This provision realigns the definition of ''accessory food items'' with statutory intent, defining ''accessory food items'' to include snacks, desserts, and foods that complement or supplement meals.

While any food or food product intended for home consumption is generally considered to be eligible for purchase with SNAP benefits, only staple food products are counted toward a retail food store's eligibility to participate in SNAP. Staple foods are generally considered to be basic items of food that make up a significant portion of an individual's diet and are usually prepared at home and consumed as a major component of a meal. Some examples include tomatoes, ground beef, milk, or rice. Accessory food items, on the other hand, are generally considered to be food items consumed as snacks or desserts as well as food items that complement or supplement meals, such as most beverages and spices.

A product is often considered an accessory food item if it is usually consumed on its own, usually as a snack or dessert, without being cooked or prepared (*e.g.,* potato chips or an ice-cream sandwich). Products that are explicitly identified as staple foods, such as hand fruit, are not considered

accessory foods even if they are sometimes consumed on their own without being cooked or prepared. A product is also often considered an accessory food item if it is usually used to flavor other foods (*e.g.,* salt or sugar) or if it is a beverage (*e.g.,* soda pop or water). If a product would normally be considered a staple food, but is sold in a small package size (*e.g.,* a small bag of dried apricots or a yogurt cup), that product is still generally considered a staple food.

Commercially processed foods and prepared mixtures with multiple ingredients are usually assigned to the staple food category of their main ingredient on their ''Nutrition Facts'' label per current regulations and policy. For example, a frozen pizza with enriched white wheat flour listed as its main ingredient would be considered a staple food variety in the bread or cereals staple food category. If the main ingredient of a multiple ingredient food item is an accessory food item (*e.g.,* salt), then that multiple ingredient food item is considered an accessory food item. The one exception to this policy is the accessory food item water. If the main ingredient of a multiple ingredient food item is water, then that item is assigned to the staple food category of its second listed ingredient. If that second ingredient is also an accessory food item (*e.g.,* sugar) then that item is considered an accessory food item.

All food products identified as accessory food items in Agency guidance materials shall not be considered staple foods for the purposes of determining the eligibility of any firm. Any food products with main ingredients identified as accessory food items in Agency guidance shall also be considered accessory food items and shall not be considered staple foods for the purposes of determining the eligibility of any firm. Any other food product that is not identified as an accessory food item in Agency guidance materials shall be considered a staple food in the category of its main ingredient. Agency guidance that explicitly identifies types of accessory food items will be updated as necessary per 7 CFR 278.1(t). If a retail food store owner is unsure as to whether a food item is or is not an accessory food item, they may look online for guidance through the USDA FNS's Ask the Expert system at: *http://www.fns.usda.gov/ask-the-expert* (--> ''Nutrition'' --> ''Supplemental Nutrition Asst Prgm''). Additional training for retail food store owners will be made available to further clarify this matter as deemed necessary.

What follows is a list of accessory food items; any product not listed below or in future Agency guidance will be considered a staple food, as explained above, provided that its main ingredient is considered a variety in the staple food category.

Snack and Dessert Food Items:

- Potato, corn, wheat, tortilla, pita, and vegetable chips, crisps, sticks, and straws; onion ring snacks; corn nuts; snack mixes; crackers; pork rinds; pretzels; pre-popped or unpopped popcorn; and cheese puffs or curls
- Doughnuts, cupcakes, cookies, snack cakes, muffins, pastries, sweet rolls, pies, cakes, pudding, churros, scones, gelatin desserts, and any packaged mixes intended to create any of the aforementioned products
- Mints, chocolate, marshmallow, gum, toffee, brittle, fudge, marzipan, nougat, candy bars, and candy of all kinds
- Ice cream, ice milk, frozen yogurt, custard, whipped cream, sherbet, sorbet, gelato, granita, Italian ices, frozen carbonated beverages, snow cones, and ice pops
- Any food product with a main ingredient that appears on this list or in Agency guidance as an accessory food item

Food Items That Complement or Supplement Meals:

- Powdered, dried, or extracted spices or seasonings
- Baking soda and baking powder
- Sugar, honey, maple syrup, aspartame, molasses, high fructose corn syrup, and any other natural or artificial sweeteners
- Soda pop, sports or energy drinks, iced tea, fruit punch, mixers for alcoholic beverages, water, and all other carbonated or uncarbonated beverages (except milk, plant-based milk alternatives, and 100% fruit or vegetable juice)
- Monosodium glutamate, sodium nitrate, olestra, and any other food additives or any food product that is edible but non-caloric and non-digestible
- Vegetable oil, olive oil, shortening, lard, safflower oil, and any other solid or liquid oils or fats (except butter)
- Ketchup, mayonnaise, salad dressing, hot sauce, mustard, vinegar, relish, horseradish, chutney, duck sauce, marmite, and all other condiments
- Vanilla extract or other flavor extracts and cooking wine
- Gravy and bouillon
- Any food product with a main ingredient that appears on this list or in Agency guidance as an accessory food item

Some mixed packaged food products may consist of more than one discrete element, such as salted crackers and soft cream cheese packaged together. In this example, the salted crackers are considered an accessory food while the soft cream cheese is considered a staple food. If the accessory food item is the main component of the mixed packaged food product, per the ingredients list on the Nutrition Facts label, then such a product is considered an accessory food item. If the staple food item is the main component of the mixed packaged food product, per the ingredients list on the Nutrition Facts label, then such a product is considered a staple food item.

The definition of ''accessory food items'', however, is not based on packaging size or style, nor does it include food items identified in any of the four staple food categories. What follows is an illustrative, but not exhaustive, list of staple food items NOT considered accessory food items; any product not listed below will be considered a staple food in the staple food category of its main ingredient as explained previously.

Examples of Staple Foods:

- Commercially processed foods and prepared mixtures with multiple ingredients with a staple food main ingredient
- Pre-cut, to-go packages or cups of fresh apple, carrot, grapefruit, celery, or other fruits or vegetables
- Single-serving yogurt cups containing or not containing fruit, with a staple food main ingredient
- Milk, flavored milk (*e.g.,* chocolate milk), and plant-based milk alternatives (*e.g.,* soy milk), with a staple food main ingredient
- Yogurt and flavored yogurt (*e.g.,* strawberry yogurt) with a staple food main ingredient
- Dehydrated, smoked, fermented, cured, or dried meats such as jerky or salami with a staple food main ingredient (*e.g.,* beef or chicken)
- Peanut butter, strawberry jam, and other plant-based spreads with a staple food main ingredient
- Fresh vegetables often used as herbs including, but not limited to, fresh basil, fresh thyme, and fresh mint
- 100% fruit and/or vegetable juice
- Salsa, hummus, guacamole, and other plant-based dips with a staple food main ingredient
- Pickled fruits, vegetables, eggs, or meats with a staple food main ingredient
- Single-serving packets of dried fruit

including, but not limited to, raisins, prunes, dried apples, and dried papaya spears, as well as dried vegetables
- To-go packages of nuts or seeds

VI. Procedural Matters

Executive Order 12866, Executive Order 13563, and Executive Order 13272

Executive Orders 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). Executive Order 13563 emphasizes the importance of quantifying both cost and benefits, of reducing cost, of harmonizing rules, and of promoting flexibility. Finally, Executive Order 13272 and the Small Business Jobs Act of 2010 require agencies engaged in rulemaking actions to respond directly to written comments submitted by the Small Business Administration (SBA) Office of Advocacy.

The SBA Office of Advocacy submitted a comment in response to the proposed rule. This comment identified shortcomings in FNS's Regulatory Impact Analysis (RIA) and Regulatory Flexibility Analysis (RFA) and also conveyed the concerns of small business stakeholders regarding the RIA, RFA, and certain provisions of the rule as proposed. The SBA commented that the RIA and RFA lacked analytical rigor and transparency, and further maintained that the costs, benefits, and other impacts of the proposed rule were not sufficiently quantified in the RIA and RFA. Specifically, the SBA stated that the Agency's ''conclusion that the rule's impact on small authorized SNAP retailers will amount to $140 is underestimated.'' Furthermore, the SBA indicated that FNS failed to consider alternatives adequately when drafting the proposed rule, especially with respect to a narrower rulemaking action that codified only the statutory breadth of stock provision. In response to these and other concerns FNS has carefully reexamined the proposed RIA and RFA. The final versions of these documents reflect substantial modifications made in order to incorporate the feedback of the SBA as well as industry trade associations. These changes address concerns regarding the consideration of alternatives and the calculation of the cost impact, among others.

Additionally, in its comment the SBA suggested that ''FNS should commit to publishing small business compliance guides as this rule becomes finalized as it will help small businesses adapt to the new requirements.'' As stated previously in this final rule's section titled ''Retailer Guidance for Implementation of Final Rule,'' many Program stakeholders specifically requested that FNS provide retailers with detailed guidance and training materials on the rule to ensure that all retailers fully understand all of the provisions of the final rule. In addition to the clarifications and lists of examples provided in the preamble of the final rule, FNS will answer retailer inquiries and provide retailers with additional notice, guidance, and training materials during the aforementioned implementation period per 7 CFR 278.1(t). This will include extensive outreach to ensure that the retailer community is provided with sufficient technical assistance to ensure that all firms are adequately informed regarding these changes to SNAP rules. The SBA also suggested that FNS should consider ''granting increased compliance time for a percentage of small retailers.'' As stated previously in this final rule's section titled **DATES**, the stocking provisions of this final rule will be implemented 365 days after the effective date of this final rule for all currently authorized firms. This phased implementation will give small format retailers the time they need to come into compliance with the provisions of this final rule.

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB). The Regulatory Impact Analysis (RIA) for this rulemaking was published as part of the docket in Supporting Documents on *www.regulations.gov.* A summary of the RIA follows.

Regulatory Impact Analysis Summary

Need for Action: The final rule is needed to clarify and enhance current regulations governing the eligibility of retail food stores participating in SNAP and to codify mandatory provisions of the 2014 Farm Bill.

Benefits: This final rulemaking will codify mandatory provisions of the 2014 Farm Bill and strengthen provisions in current regulations to conform to the intent of statutory requirements. The final rule will increase the variety of nutrient-dense staple food products offered for sale at SNAP-authorized firms, while also increasing the required depth of stock. Together, these provisions will help to ensure that SNAP households have access to healthier foods on a continuous basis. The final rule reflects the Agency's commitment to provide vital nutrition assistance to our most vulnerable citizens, protect taxpayer monies, and safeguard Program integrity. The final rule allows FNS to ensure that retailers authorized to participate in SNAP as retail food stores are consistent with the purposes of the Program. The final rule reinforces the intent of SNAP that participants use their benefits to purchase more nutritious foods intended for home preparation and consumption.

Costs: There will be costs to the Federal government as a result of the final rule due to a short-term increase in store visits to ensure compliance with the new stocking requirements. The Agency has estimated the total cost to the Federal government as approximately $3.7 million in Fiscal Year (FY) 2018 and $15 million over five years. With respect to the cost impact to retailers, the rule would mainly impact those firms that are minimally stocked and those that are primarily restaurants and, therefore, are inconsistent with the statutory intent of the Act to make nutritious foods available to SNAP participants for home preparation and consumption. Some retailers may incur small costs due to the need to modify their stock. Estimates of the final rule's impacts on retailers are based on an analysis of a nationally representative sample of 1,392 SNAP authorized small-format firms using data gathered by FNS during store inspections, or store visits. Based on this analysis FNS estimates that the average small-format SNAP authorized firm already stocks over 70% of the stock needed to meet the requirements of this final rule and the average small-format SNAP authorized firm will only need to stock an additional 24 items. Moreover, this analysis indicated that over 98% of small-format SNAP authorized firms currently stock at least nine perishable staple food items and, therefore, that the overwhelming majority of small-format SNAP authorized firms will not need to stock any additional perishable items to meet the requirements in this final rule. The average cost to a small SNAP authorized retail food store is estimated at about $245 in the first year and about $620 over five years.

Firms that do not stock sufficient staple food items to meet the new stocking requirements will have the opportunity to modify their staple food stock in order to be eligible to continue participating in SNAP. In the course of store reviews, FNS has observed that stores that are determined to not be eligible typically expand their food offerings to participate in SNAP.

It should be noted that most of the provisions in this final rule have been modified significantly from their proposed language. This final rule, for example, requires less stock than the proposed rule (*i.e.,* 168 item stock requirement proposed and 84 item stock required in the final rule). Nevertheless, the final average retailer cost estimate (about $245 in the first year and about $620 over five years per firm) represents an increase over the cost estimate presented in the proposed RIA and RFA (about $140 in the first year per firm). Several commenters pointed out types of costs, including ongoing costs, not originally accounted for in the Agency's cost estimate (*e.g.,* ''opportunity costs''). FNS appreciates this public feedback and has incorporated these types of costs in its calculations of estimated cost for the final rule's RIA and RFA.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Pursuant to that review, FNS believes that the rulemaking does not present a substantial economic impact to a considerable number of small businesses; although the number of stores impacted is large, we estimate that the cost to those small businesses for stocking additional stock would be nominal, on average about $245 in the first year and $620 over five years. FNS has prepared a final Regulatory Flexibility Analysis (RFA) to respond to public comments received in reference to the proposed RFA and to reflect revisions to the rule. The complete RFA for this final rule was published as part of the docket in Supporting Documents on *www.regulations.gov.* A summary of the RFA follows.

Regulatory Flexibility Analysis Statement

This final rule will impact nearly 200,000 small grocery stores and convenience stores by requiring that these stores make changes to their stock in order to comply with the new minimum stocking requirement mandated in this rule. FNS estimates that for the vast majority of stores the changes needed will be minimal and represent a negligible share of a store's total gross sales. The average small store will need to add an estimated 24 items to their existing stock to meet the new minimum requirement in this rule. Costs would be greatest in the first year, as stores make one-time changes to their stock. In future years, costs will be primarily opportunity costs associated with stocking items with lower profit margins and administrative costs associated with reading guidance to ensure compliance with the requirements. The average cost to a SNAP-authorized retailer is estimated at about $245 in the first year and $620 over five years.

Public Law 104–4, the Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and the private sector. Under Section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or Tribal governments in the aggregate, or to the private sector, of $146 million or more (when adjusted for 2015 inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $146 million or more in any one year. This rulemaking is, therefore, not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

Executive Order 12372 requires Federal agencies to engage in intergovernmental consultation with State and local officials when involved in Federal financial assistance programs and direct Federal development. SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372.

Executive Order 13132, Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have Federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agencies' considerations in terms of the three categories called for under Section 6(b)(2)(B) of the Executive Order 13132.

FNS has determined that this rulemaking does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effects with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effects unless so specified in the Dates paragraph of the final rule. Prior to any judicial challenge to the provisions of the final rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Executive Order 13175, Tribal Impact Statement

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Currently, FNS provides regularly scheduled quarterly information sessions as a venue for collaborative conversations with Tribal officials or their designees. Reports from these information sessions are part of the USDA annual reporting on Tribal consultation and collaboration.

During the open comment period FNS received a letter from an Indian Tribal Organization (ITO). On September 28, 2016, the Food and Nutrition Service met with the Tribal Organization and 8 Tribes represented by this Organization to further discuss comments contained in this letter. FNS identified one (1) actionable comment, *e.g.* SNAP

eligibility should be considered circumstantially in areas with limited food access.

The 2014 Farm Bill authorized additional consideration where an applicant retailer is located in an area with significantly limited access to food when determining the qualifications of that applicant. This flexibility of the rule was clarified during the meeting on September 28, to provide a deeper understanding of the agency's underlying rationale in implementing this program in this manner.

If a Tribe requests consultation, the Food and Nutrition Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

USDA Regulation 4300–4, Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with Departmental Regulations 4300–4, ''Civil Rights Impact Analysis'' (CRIA) and 1512–1, ''Regulatory Decision Making Requirements'' to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. This final rule enhances current regulations and codifies statutory requirements and, after a careful review of the final rule's intent and provisions, FNS has determined that this final rule will not have an adverse impact on any retail food store owners or SNAP recipients belonging to protected classes. The complete CRIA for this final rule was published as part of the docket in Supporting Documents on *www.regulations.gov.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. There is no new information collection burden associated with this final rule.

E-Government Act Compliance

FNS 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. FNS intends to provide Program stakeholders with guidance and technical assistance materials related to this final rule utilizing online media. The Agency also intends to use online media to publicly disclose information regarding firms sanctioned for Program violations.

List of Subjects

7 CFR Part 271

Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

7 CFR Part 278

Claims, Disqualification, Financial institutions, Fines and penalties, Food stamps, Retail food stores, Wholesale food concerns.

Accordingly, for reasons set forth in the preamble, 7 CFR parts 271 and 278 are amended as follows:

■ 1. The authority citation for 7 CFR parts 271 and 278 continue to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 2. In § 271.2:
■ a. Add a definition for *Firm* in alphabetical order.
■ b. Revise paragraph (1) of the definition of *Retail food store.*
■ c. Revise the definition of *Staple food.*

The addition and revisions read as follows:

§ 271.2 Definitions.

* * * * *

Firm. (1) *Firm* means:

(i) A retail food store that is authorized to accept or redeem SNAP benefits;

(ii) A retail food store that is not authorized to accept or redeem SNAP benefits; or

(iii) An entity that does not meet the definition of a retail food store.

(2) For purposes of the regulations in this subchapter and SNAP policies, the terms firm, entity, retailer, and store are used interchangeably.

* * * * *

Retail food store means:

(1) An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale qualifying staple food items on a continuous basis, evidenced by having no fewer than seven different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple variety, including at least one variety of perishable foods in at least three such categories, (Criterion A) as set forth in § 278.1(b)(1) of this chapter, or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) as set forth in § 278.1(b)(1) of this chapter as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of stockkeeping units, or other accounting recordkeeping methods that are customary or reasonable in the retail food industry as set forth in § 278.1(b)(1) of this chapter. Entities that have more than 50 percent of their total gross retail sales in: Food cooked or heated on-site by the retailer before or after purchase; and hot and/or cold prepared foods not intended for home preparation and consumption, including prepared foods that are consumed on the premises or sold for carry-out are not eligible for SNAP participation as retail food stores under § 278.1(b)(1) of this chapter. Establishments that include separate businesses that operate under one roof and share the following commonalities: Ownership, sale of similar foods, and shared inventory, are considered to be a single firm when determining eligibility to participate in SNAP as retail food stores.

* * * * *

Staple food means those food items intended for home preparation and consumption in each of the following four categories: Meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. The meat, poultry, or fish staple food category also includes up to three types of plant-based protein sources (*i.e.,* nuts/seeds, beans, and peas) as well as varieties of plant-based meat analogues (*e.g.,* tofu). The dairy products staple food category also includes varieties of plant-based dairy alternative staple food items such as, but not limited to, almond milk and soy yogurt. Hot foods are not eligible for purchase with SNAP benefits and, therefore, do not qualify as staple foods for the purpose of determining eligibility under § 278.1(b)(1) of this chapter. Commercially processed foods and prepared mixtures with multiple ingredients that do not represent a single staple food category shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will be included in the staple food category of the main ingredient as determined by FNS. Accessory food items include foods that are generally considered snack foods or desserts such as, but not

limited to, chips, ice cream, crackers, cupcakes, cookies, popcorn, pastries, and candy, and other food items that complement or supplement meals, such as, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments, spices, salt, and sugar. Items shall not be classified as accessory food exclusively based on packaging size but rather based on the aforementioned definition and as determined by FNS. A food product containing an accessory food item as its main ingredient shall be considered an accessory food item. Accessory food items shall not be considered staple foods for purposes of determining the eligibility of any firm.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

■ 3. In § 278.1:
■ a. Amend the last sentence in paragraph (b)(1)(i)(A) by removing the word ''two'' and adding in its place the word ''three''.
■ b. Revise paragraph (b)(1)(ii)(A);
■ c. Amend the first sentence in paragraph (b)(1)(ii)(B) by removing the word ''two'' and adding in its place the word ''three''.
■ d. Revise paragraph (b)(1)(ii)(C);
■ e. Revise the fourth sentence in paragraph (b)(1)(iv);
■ f. Redesignate paragraph (b)(6) as paragraph (b)(7);
■ g. Add new paragraph (b)(6).
■ h. Add paragraph (q)(5).

The additions and revisions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) Offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than seven different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple variety and at least one variety of perishable foods in at least three staple food categories. Documentation to determine if a firm stocks a sufficient amount of required staple foods to offer them for sale on a continuous basis may be required in cases where it is not clear that the firm has made reasonable stocking efforts to meet the stocking requirement. Such documentation can be achieved through verifying information, when requested by FNS, such as invoices and receipts in order to prove that the firm had ordered and/or received a sufficient amount of required staple foods up to 21 calendar days prior to the date of the store visit. Failure to provide verifying information related to stock when requested may result in denial or withdrawal of authorization. Failure to cooperate with store visits shall result in the denial or withdrawal of authorization.

* * * * *

(C) Offer a variety of staple foods which means different types of foods within each staple food category. For example: Apples, cabbage, tomatoes, bananas, pumpkins, broccoli, and grapes in the vegetables or fruits category; or cow milk, almond milk, soy yogurt, soft cheese, butter, sour cream, and cow milk yogurt in the dairy products category; or rice, bagels, pitas, bread, pasta, oatmeal, and whole wheat flour in the bread or cereals category; or chicken, beans, nuts, beef, pork, eggs, and tuna in the meat, poultry, or fish category. Variety of foods is not to be interpreted as different brands, nutrient values (*e.g.,* low sodium and lite), flavorings (*e.g.,* vanilla and chocolate), packaging types or styles (*e.g.,* canned and frozen) or package sizes of the same or similar foods. Similar food items such as, but not limited to, tomatoes and tomato juice, different types of rice, whole milk and skim milk, ground beef and beefsteak, or different types of apples (*e.g.,* Empire, Jonagold, and McIntosh), shall count as depth of stock but shall not each be counted as more than one staple food variety for the purpose of determining the number of varieties in any staple food category. Accessory foods shall not be counted as staple foods for purposes of determining eligibility to participate in SNAP as a retail food store.

* * * * *

(iv) * * * In addition, firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross sales in foods cooked or heated on-site by the retailer before or after purchase; and hot and/or cold prepared foods not intended for home preparation or consumption, including prepared foods that are consumed on the premises or sold for carryout, shall not qualify for participation as retail food stores under Criterion A or B. * * *

* * * * *

(6) *Need for access.* FNS will consider whether the applicant firm is located in an area with significantly limited access to food when the applicant firm fails to meet Criterion A per paragraph (b)(1)(ii) or Criterion B per paragraph (b)(1)(iii) of this section so long as the applicant firm meets all other SNAP authorization requirements. In determining whether an applicant is located in such an area, FNS may consider access factors such as, but not limited to, the distance from the applicant firm to the nearest currently SNAP authorized firm and transportation options. In determining whether to authorize an applicant despite its failure to meet Criterion A and Criterion B, FNS will also consider factors such as, but not limited to, the extent of the applicant firm's stocking deficiencies in meeting Criterion A and Criterion B and whether the store furthers the purposes of the Program. Such considerations will be conducted during the application process as described in paragraph (a) of this section.

* * * * *

(q) * * *

(5) *Public disclosure of firms sanctioned for SNAP violations.* FNS may disclose information to the public when a retail food store has been disqualified or otherwise sanctioned for violations of the Program after the time for administrative and judicial appeals has expired. This information is limited to the name and address of the store, the owner(s') name(s) and information about the sanction itself. FNS may continue to disclose this information for as long as the duration of the sanction. In the event that a sanctioned firm is assigned a civil penalty in lieu of a period of disqualification, as described in § 278.6(a), FNS may continue to disclose this information for as long as the duration of the period of disqualification or until the civil penalty has been paid in full, whichever is longer.

* * * * *

Dated: December 7, 2016.

Audrey Rowe,

Acting Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 2016–29837 Filed 12–14–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF ENERGY

10 CFR Part 609

RIN 1901–AB38

Loan Guarantees for Projects That Employ Innovative Technologies

AGENCY: Loan Programs Office, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) publishes a final rule to amend the existing regulations for the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 (Title XVII or the Act). Section 1703 of Title XVII (section 1703) authorizes the Secretary of Energy (Secretary) to make loan guarantees for projects that avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases. Such projects must also employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued. The two principal goals of section 1703 are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. Section 1703 also identifies ten categories of technologies and projects that are potentially eligible for loan guarantees. Commercial use of these technologies is expected to help sustain and promote economic growth, produce a more stable and secure energy supply and economy for the United States, and improve the environment.

As a result of experience gained implementing the loan guarantee program authorized by section 1703, and information received from program participants, including applicants, borrowers, sponsors, and lenders, as well as various energy industry groups, DOE finalizes amendments to the existing regulations to provide increased clarity and transparency, reduce paperwork, and provide a more workable interpretation of certain statutory provisions in light of DOE's experience with operation of the Title XVII program.

DATES: This rule is effective on January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Mark S. Westergard, Assistant Chief Counsel Regulatory Affairs, Loan Programs Office, United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 287–5621, email: *lgprogram@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Public Comments on the NOPR and DOE's Responses
A. Competition with Potential Future Applications
B. Risk-Based Charge
C. Section 609.8(c)(2) and section 609.8(c)(3)
III. Regulatory Review
IV. Approval of the Office of the Secretary

I. Introduction and Background

This final rule amends the regulations implementing the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514) (referred to as Title XVII). Section 1703 of Title XVII (section 1703) authorizes the Secretary of Energy (Secretary) to make loan guarantees for projects that: (1) Avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and (2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued. (42 U.S.C 16513(a)).

Section 1702 of Title XVII (section 1702) authorizes the Secretary, after consultation with the Secretary of the Treasury, to enter into loan guarantees on such terms and conditions as he or she determines to be appropriate, in accordance with the provisions of section 1702. Section 1702 also directs the Secretary to include in loan guarantees ''such detailed terms and conditions as the Secretary determines appropriate to (i) protect the interests of the United States in the case of a default; and (ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.'' (42 U.S.C. 16512(g)(2)(c)).

On October 3, 2016, the Department published a proposed rule and request for comment on amendments to the regulations for the Title XVII loan guarantee program. (81 FR 67924) The proposed rule also provides additional background on DOE's experience in implementing the loan guarantee program and the history of its implementing regulations. In this final rule, DOE adopts the changes set forth in the proposed rule, except where DOE made changes in consideration of comments received on the proposal. In Section II of this final rule, DOE summarizes the comments received, and provides its responses to those comments and a discussion of the changes made to the proposal in this final rule.

In this final rule, DOE adopts the proposed rule changes that clarify the circumstances under which potential applicants may communicate with DOE prior to submitting an application. DOE expects that the changes will increase transparency and result in more applications by qualified applicants with respect to potential eligible projects.

The final rule eliminates the pre-application process and codifies procedures that divide the application into two parts.

The final rule revises the definition of Eligible Project to explicitly state that a project may be located at two or more locations in the United States if the project is comprised of installations or facilities employing a single New or Significantly Improved Technology that is deployed pursuant to an integrated and comprehensive business plan.

The final rule provides for the use of Risk-Based Charges. Use of Risk-Based Charges is permitted pursuant to the grant of authority to the Secretary in Section 1702(a) to determine the terms and conditions of the Title XVII loan guarantee program.

The final rule increases clarity and transparency. For example: Definitions have been clarified, shortened where possible, and added; specific references to the Cargo Preference Act and the Davis Bacon Act have been added; an introductory section on how the rule is to be interpreted has been added; and various provisions of the existing rule have been re-organized to more-appropriate places in the rule.

DOE received comments on the proposed rule, which are summarized in Section II of this final rule. DOE also provides its responses and explains any changes to the proposal made in response to the comments received. (For additional background on DOE's experience in implementing the loan guarantee program and the history of its implementing regulations, please see the proposed rule.)

II. Public Comments on the NOPR and DOE's Responses

A. Competition With Potential Future Applications

Public comment: One commenter requests clarification and revision of the proposed changes in § 609.5(a) to the competitive process for evaluating completed Applications, which would require completed Applications to be evaluated against potential projects that may become the subject of an Application. The commenter is concerned that the proposed changed will delay the Application process and put otherwise qualified projects in ''limbo'' while the DOE awaits the filing of Applications that may be filed on other projects. In the commenter's view, this may result in a longer and more opaque process, because fewer projects would be able to withstand the additional timing delays, as well as in greater market uncertainty about the DOE loan guarantee program.

DOE Response: DOE notes that applications are reviewed against all other applications filed within the same round. For that reason DOE does not believe the proposed change would delay the application process or put otherwise qualified projects in ''limbo.'' Nevertheless, DOE agrees that the proposed change could cause a more opaque process and market uncertainty regarding, among other matters, whether a project will be competed against potential projects that may become the subject of an application. The proposal to consider potential future Applications is inconsistent with competing filed Applications against all other Applications filed within the same round. For those reasons DOE has decided to withdraw the proposed change to the competitive process which would allow consideration of potential projects during the competition.

B. Risk-Based Charge

Public comments: Both commenters requested clarification regarding the ''Risk-based-charge'' which they believe is duplicative of other existing fees. The commenters urge DOE not to impose this additional fee on recipients of DOE's Title XVII loan guarantees.

One commenter also pointed out that the Title XVII loan guarantee program currently charges two fees to compensate DOE for the credit risk it assumes. First, the program charges a ''Credit-Based Interest Rate Spread'' based on the credit rating of the Applicant's project. Second, the program charges a ''Credit Subsidy Fee'' to directly compensate the United States for the specific credit risk of the applicant's project. The commenter requested clarification that the reference to a ''Risk-based charge'' means the ''Credit Based Interest Rate Spread'', and that the program is not intending to impose a new fee and increase the interest rate spreads beyond the current spreads.

DOE Response: Section 1702(e) of Title XVII requires the Secretary to establish interest rates that do not exceed a level that the Secretary determines appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks. In the proposed rule, DOE proposed a ''Risk-Based Charge'' that, taking into account all interest and interest-related costs, is intended to make DOE's charges and costs consistent with the commercial markets and other federal credit programs. Thus, the Risk-Based Charge will be used only to the extent the aggregate of other interest-related charges do not sufficiently reflect creditworthiness or specific risks arising from individual transactions. The Risk-Based Charge, while distinct from the fee for the Credit Subsidy Cost, may incidentally affect that fee by increasing expected inflows to the United States that are considered in calculating the amount of the fee. In that respect, taking into account the time value of money, the Risk-Based Charge can be viewed as affecting the time of payment rather than the amount of payment based on the creditworthiness of the borrower and the expectations regarding probability of repayment. After factoring in the Risk-Based Charge, DOE does not expect the present value of the interest amounts expected to be paid by the borrower as the cost of the loan should be significantly different than the interest amounts that would be paid without the Risk-Based Charge.

C. Section 609.8(c)(2) and Section 609.8(c)(3)

Public comment: One commenter requested clarification of what it views as an apparent inconsistency between §§ 609.8(c)(2) and 609.8(c)(3) of the proposed rule. The commenter stated that § 609.8(c)(2) appears to require that the guaranteed and nonguaranteed portions of a loan partially guaranteed by DOE be repaid pro rata, and on the same amortization schedule. Section 609.8(c)(3) appears to the commenter to provide for exceptions to this requirement under certain conditions.

The commenter also requested that DOE modify § 609.8 to allow for commercial co-lenders to provide structured loan facilities that would have the same amortization schedule as the guaranteed portion of the facility but with a shorter loan tenor and a related refinancing requirement at maturity of the structured loan facility.

DOE Response: DOE does not view §§ 609.8(c)(2) and 609.8(c)(3) as inconsistent. Section 609.8(c)(2) deals with the guaranteed and nonguaranteed portions of loans partially guaranteed by DOE. Section 609.8(c)(3) deals with financing or credit arrangements not guaranteed by DOE.

The commenter's request for a shorter loan tenor in connection with certain commercial loan products is similar to a comment DOE received in response to a proposed rule to amend the Title XVII regulations published in 2009. (74 FR 39569, Aug. 7, 2009) In the final rule, published on December 4, 2009, DOE made adjustments, retained by the proposed rulemaking and subject to the same conditions set forth in the current rule, to permit shorter or faster amortization schedules for project-related financing or other credit arrangements not guaranteed by DOE. See 74 FR 63544, 63546, Section II.C. Shorter Amortization of Non-Guaranteed Obligations. DOE has reviewed the issue in response to the comment and has determined that the provisions established in the 2009 rule address the concern while at the same time protecting the interests of the United States. For that reason, DOE has determined that no change in the existing language of the final rule is warranted.

Other Changes: While reviewing the proposed rule in response to public comments, DOE found certain areas in the proposed rule that should be modified consistent with DOE's intent to increase transparency and clarity. On further consideration, DOE determined that its treatment of the prohibition in Section 149(b) of the Internal Revenue Code in § 609.8(c)(4) created ambiguity and made application of the provision more complicated. Therefore, DOE eliminated the changes in the proposed rule and restored the language of the existing rule to tie the rule to the requirements of law as they related to tax-exempt debt obligation financing. Finally, DOE clarified a provision relating to communications with applicants by deleting a sentence that was unclear and not required by law.

III. Regulatory Review

A. Executive Order 12866

This final rule has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemaking that amends an existing rule or regulation which does not change the environmental effect of the rule or regulation being amended.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if

promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.energy.gov/gc/downloads/executive-order-13272-consideration-small-entities-agency-rulemaking.*

DOE is not obligated to prepare a regulatory flexibility analysis for this rulemaking because there is not a requirement to publish a general notice of proposed rulemaking for rules related to loans under the Administrative Procedure Act (5 U.S.C. 553(a)(2)).

D. Paperwork Reduction Act

Information collection requirements for the DOE regulations at 10 CFR part 609 have been submitted for approval to OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedure implementing that Act (5 CFR 1320.1 *et seq.*) under OMB Control Number 1910–5134. The revised recordkeeping and reporting requirements associated with this rulemaking are not mandatory until the information collection is approved by OMB.

Public reporting burden for the revised requirements in this final rule is estimated to average 130 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses are expected to be collected electronically.

Notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Act) (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. The term ''Federal mandate'' is defined in the Act to mean a Federal intergovernmental mandate or a Federal private sector mandate. Although the final rule would impose certain requirements on non-Federal governmental and private sector applicants for loan guarantees, the Act's definitions of the terms ''Federal intergovernmental mandate'' and ''Federal private sector mandate'' exclude among other things, any provision in legislation, statute, or regulation that is a condition of Federal assistance or a duty arising from participation in a voluntary program. The final rule would establish requirements that persons voluntarily seeking loan guarantees for projects that would use certain new and improved energy technologies must satisfy as a condition of a Federal loan guarantee. Thus, the final rule falls under the exceptions in the definitions of ''Federal intergovernmental mandate'' and ''Federal private sector mandate'' for requirements that are a condition of Federal assistance or a duty arising from participation in a voluntary program. The Act does not apply to this rulemaking.

F. Treasury and General Government Appropriations Act, 1999

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

G. Executive Order 13132

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

H. Executive Order 12988

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

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that

promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and has not been designated by OIRA as a significant energy action, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Executive Order 12630

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

L. Congressional Notification

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

IV. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 609

Administrative practice and procedure, Energy, Loan programs, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 6, 2016.

Mark A. McCall,

Executive Director, Loan Programs Office.

For the reasons stated in the preamble, DOE revises part 609 of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 609—LOAN GUARANTEES FOR PROJECTS THAT EMPLOY INNOVATIVE TECHNOLOGIES

Sec.

609.1 Purpose and scope.
609.2 Definitions and interpretation.
609.3 Solicitations.
609.4 Submission of applications.
609.5 Programmatic, technical and financial evaluation of applications.
609.6 Term sheets and conditional commitments.
609.7 Closing on the loan guarantee agreement.
609.8 Loan guarantee agreement.
609.9 Lender servicing requirements.
609.10 Project costs.
609.11 Fees and charges.
609.12 Full faith and credit and incontestability.
609.13 Default, demand, payment, and collateral liquidation.
609.14 Preservation of collateral.
609.15 Audit and access to records.
609.16 Deviations.

Authority: 42 U.S.C. 7254, 16511–16514.

§ 609.1 Purpose and scope.

(a) This part sets forth the policies and procedures that DOE uses for receiving, evaluating, and approving applications for loan guarantees to support Eligible Projects under section 1703 of the Energy Policy Act of 2005 (Act).

(b) This part applies to all Applications, Conditional Commitments, and Loan Guarantee Agreements.

(c) Part 1024 of chapter X of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

§ 609.2 Definitions and interpretation.

(a) *Definitions.* When used in this part the following words have the following meanings.

Act means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514), as amended.

Administrative Cost of Issuing a Loan Guarantee means the total of all administrative expenses that DOE incurs during:

(1) The evaluation of an Application for a loan guarantee;

(2) The negotiation and offer of a Term Sheet;

(3) The negotiation of a Loan Guarantee Agreement and related documents, including the issuance of a Guarantee; and

(4) The servicing and monitoring of a Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project.

Applicant means a Person, including a prospective Borrower or Project Sponsor, that submits an Application to DOE.

Application means a written submission of materials responsive to a Solicitation that satisfies § 609.4.

Application Fee means the fee or fees required to be paid by an Applicant in connection with submission of an Application and specified in a Solicitation. The Application Fee does not include the Credit Subsidy Cost.

Attorney General means the Attorney General of the United States.

Borrower means any Person that enters into a Loan Guarantee Agreement with DOE and issues Guaranteed Obligations.

Cargo Preference Act means the Cargo Preference Act of 1954, 46 U.S.C. 55305, as amended.

Commercial Technology means a technology in general use in the commercial marketplace in the United States at the time the Term Sheet is offered by DOE. A technology is in general use if it is being used in three or more facilities that are in commercial operation in the United States for the same general purpose as the proposed project, and has been used in each such facility for a period of at least five years. The five-year period for each facility shall start on the in-service date of the facility employing that particular technology or, in the case of a retrofit of a facility to employ a particular technology, the date the facility resumes commercial operation following completion and testing of the retrofit. For purposes of this section, facilities that are in commercial operation include projects that have been the recipients of a loan guarantee from DOE under this part.

Conditional Commitment means a Term Sheet offered by DOE and accepted by the offeree of the Term Sheet, all in accordance with § 609.6(c); provided, that the Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement; and provided, further, that the Secretary may not delegate this authority to terminate a Conditional Commitment.

Contracting Officer means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer or terminate DOE Loan Guarantee Agreements and related contracts on behalf of DOE.

Credit Subsidy Cost has the same meaning as ''cost of a loan guarantee'' in section 502(5)(C) of the Federal Credit Reform Act of 1990, which is the net present value, at the time the

Loan Guarantee Agreement is executed, of the following estimated cash flows, discounted to the point of disbursement:

(1) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; less

(2) Payments to the Government including origination and other fees, penalties, and recoveries; including the effects of changes in loan or debt terms resulting from the exercise by the Borrower, Eligible Lender or other Holder of an option included in the Loan Guarantee Agreement.

Davis-Bacon Act means the statute referenced in section 1702(k) of the Act.

DOE means the United States Department of Energy.

Eligible Lender means either:

(1) Any Person formed for the purpose of, or engaged in the business of, lending money that, as determined by DOE in each case, is:

(i) Not debarred or suspended from participation in a Federal government contract or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR part 180);

(ii) Not delinquent on any Federal debt or loan;

(iii) Legally authorized and empowered to enter into loan guarantee transactions authorized by the Act and these regulations;

(iv) Able to demonstrate experience in originating and servicing loans for commercial projects similar in size and scope to the Eligible Project, or able to procure such experience through contracts acceptable to DOE; and

(v) Able to demonstrate experience as the lead lender or underwriter by presenting evidence of its participation in large commercial projects or energy-related projects or other relevant experience, or able to procure such experience through contracts acceptable to DOE; or

(2) The Federal Financing Bank.

Eligible Project means a project that:

(1) Is located in the United States at one location, except that the project may be located at two or more locations in the United States if the project is comprised of installations or facilities employing a single New or Significantly Improved Technology that is deployed pursuant to an integrated and comprehensive business plan. An Eligible Project in more than one location is a single Eligible Project;

(2) Deploys a New or Significantly Improved Technology; and

(3) Satisfies all applicable requirements of section 1703 of the Act, the applicable Solicitation, and this part.

Equity means cash contributed to the permanent capital stock (or equivalent) of the Borrower or the Eligible Project by the shareholders or other owners of the Borrower or the Eligible Project. Equity does not include proceeds from the non-guaranteed portion of a Guaranteed Obligation, proceeds from any other non-guaranteed loan or obligation, or the value of any government assistance or support.

Facility Fee means the fee, to be paid in the amount and in the manner provided in the Term Sheet, to cover the Administrative Cost of Issuing a Loan Guarantee for the period from the Borrower's acceptance of the Term Sheet through issuance of the Guarantee.

Federal Financing Bank means an instrumentality of the United States government created by the Federal Financing Bank Act of 1973, under the general supervision of the Secretary of the Treasury.

Guarantee means the undertaking of the United States of America, acting through the Secretary pursuant to Title XVII of the Energy Policy Act of 2005, to pay in accordance with the terms thereof, principal and interest of a Guaranteed Obligation.

Guaranteed Obligation means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees all or any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to the Act.

Holder means any Person that holds a promissory note made by the Borrower evidencing the Guaranteed Obligation (or his designee or agent).

Intercreditor Agreement means any agreement or instrument (or amendment or modification thereof) among DOE and one or more other Persons providing financing or other credit arrangements to the Borrower or an Eligible Project) or that otherwise provides for rights of DOE in respect of a Borrower or in respect of an Eligible Project, in each case in form and substance satisfactory to DOE.

Loan Agreement means a written agreement between a Borrower and an Eligible Lender containing the terms and conditions under which the Eligible Lender will make a loan or loans to the Borrower for an Eligible Project.

Loan Guarantee Agreement means a written agreement that, when entered into by DOE and a Borrower, and, if applicable, an Eligible Lender, establishes the obligation of DOE to guarantee the payment of all or a portion of the principal of, and interest on, specified Guaranteed Obligations, subject to the terms and conditions specified in the Loan Guarantee Agreement.

New or Significantly Improved Technology means a technology, or a defined suite of technologies, concerned with the production, consumption, or transportation of energy and that is not a Commercial Technology, and that has either:

(1) Only recently been developed, discovered, or learned; or

(2) Involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued.

OMB means the Office of Management and Budget in the Executive Office of the President.

Person means any natural person or any legally constituted entity, including a state or local government, tribe, corporation, company, voluntary association, partnership, limited liability company, joint venture, and trust.

Project Costs mean those costs, including escalation and contingencies, that are to be expended or accrued by a Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project, as specified in § 609.10(a). Project Costs do not include costs for the items set forth in § 609.10(b).

Project Sponsor means any Person that assumes substantial responsibility for the development, financing, and structuring of an Eligible Project and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project, the Borrower or the Applicant.

Risk-Based Charge means a charge that, together with the principal and interest on the guaranteed loan, or at such other times as DOE may determine, is payable on specified dates during the term of a Guaranteed Obligation.

Secretary means the Secretary of Energy or a duly authorized designee or successor in interest.

Solicitation means an announcement that DOE is accepting Applications that is widely disseminated to the public on the DOE Web site or otherwise, and which satisfies the requirements of § 609.3(b).

Term Sheet means a written offer for the issuance of a loan guarantee, executed by the Secretary (or a DOE official authorized by the Secretary to execute such offer), delivered to the offeree, that sets forth the detailed terms and conditions under which DOE and the Applicant will execute a Loan Guarantee Agreement.

United States means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and any territory or possession of the United States of America.

(b) *Interpretations.* This part shall be interpreted using the following guidelines.

(1) The word ''discretion'' when used with reference to DOE, including the Secretary, means ''sole discretion.''

(2) Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders.

(3) The word ''or'' is not exclusive.

(4) References to laws by name or popular name are references to the version of such law appearing in the United States Code and include any amendment, supplement or modification of such law, and all regulations, rulings, and other laws promulgated thereunder.

(5) References to information or documents required or allowed to be submitted to DOE mean information or documents that are marked as provided in 10 CFR 600.15(b). A document or information that is not marked as provided in 10 CFR 600.15(b) will not be considered as having been submitted to or received by DOE.

(6) A reference to a Person includes such Person's successors and permitted assigns.

(7) The words ''include,'' ''includes'' and ''including'' are not limiting and mean include, includes and including ''without limitation'' and ''without limitation by specification.''

(8) The words ''hereof,'' ''herein'' and ''hereunder'' and words of similar import refer this part as a whole and not to any particular provision of this part.

§ 609.3 Solicitations.

(a) DOE may invite the submission of Applications for loan guarantees for Eligible Projects pursuant to a Solicitation.

(b) Each Solicitation must include, at a minimum, the following information:

(1) The dollar amount of loan guarantee authority potentially being made available by DOE in that Solicitation;

(2) The place and deadline for submission of Applications;

(3) The name and address of the DOE representative whom a potential Applicant may contact to receive further information and a copy of the Solicitation;

(4) The form, format, and page limits applicable to the Application;

(5) The amount of the Application Fee and any other fees that will be required;

(6) The programmatic, technical, financial and other factors that DOE will use to evaluate response submissions, and their relative weightings in that evaluation; and

(7) Such other information as DOE may deem appropriate.

(c) Using procedures as may be announced by DOE a potential Applicant may request a meeting with DOE to discuss its potential Application. At its discretion, DOE may meet with a potential Applicant, either in person or electronically, to discuss its potential Application. DOE may provide a potential Applicant with a preliminary response regarding whether its proposed Application may constitute an Eligible Project. DOE's responses to questions from potential Applicants and DOE's statements to potential Applicants are pre-decisional and preliminary in nature. Any such responses and statements are subject in their entirety to any final action by DOE with respect to an Application submitted in accordance with § 609.4.

§ 609.4 Submission of applications.

(a) In response to a Solicitation, an Applicant must meet all requirements and provide all information specified in this part and the Solicitation in the manner and on or before the date specified therein. DOE may direct that Applications be submitted in more than one part; provided, that the parts of such Application, taken as a whole, satisfy the requirements of § 609.4(c) and this part. In such event, subsequent parts of an Application may be filed only after DOE invites an Applicant to make an additional submission. The initial part of an Application may be used by DOE to determine the likelihood that the project proposed by an Applicant will be an Eligible Project, and to evaluate such project's readiness to proceed. If there have been any material amendments, modifications or additions made to the information previously submitted by an Applicant, the Applicant shall provide a detailed description thereof, including any changes in the proposed project's financing structure or other terms, promptly upon request by DOE. Where DOE has directed that an Application be submitted in parts, DOE may provide for payment of the Application Fee in parts.

(b) An Applicant may submit only one Application for one proposed project using a particular technology. An Applicant may not submit an Application or Applications for multiple Eligible Projects using the same technology. An Applicant may submit Applications for multiple proposed projects using different technologies. For purposes of this paragraph (b), the term Applicant shall include the Project Sponsor and any subsidiaries or affiliates of the Project Sponsor.

(c) An Application must include, at a minimum, the following information and materials:

(1) A completed Application form signed by an individual with full authority to bind the Applicant, including the commitments and representations made in each part of the Application;

(2) The applicable Application Fee;

(3) A description of how and to what measurable extent the proposed project avoids, reduces, or sequesters air pollutants and/or anthropogenic emissions of greenhouse gases, including how to measure and verify those effects;

(4) A description of the nature and scope of the proposed project, including:

(i) Key project milestones;

(ii) Location or locations of the proposed project;

(iii) Identification and commercial feasibility of the New or Significantly Improved Technology to be deployed;

(iv) How the Applicant intends to deploy such New or Significantly Improved Technology in the proposed project; and

(v) How the Applicant intends to assure, to the extent possible, the further commercial availability of the New or Significantly Improved Technology in the United States.

(5) An explanation of how the proposed project qualifies as a project within the category or categories of projects referred to in the Solicitation;

(6) A detailed estimate of the total Project Costs together with a description of the methodology and assumptions used;

(7) A detailed description of the engineering and design contractor(s), construction contractor(s), and equipment supplier(s);

(8) The construction schedules for the proposed project, including major activity and cost milestones;

(9) A description of the material terms and conditions of the development and construction contracts to include the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties;

(10) A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance guarantees and related liquidated damage provisions, if any;

(11) A description of the management plan of operations to be employed in carrying out the proposed project, and information concerning the management experience of each officer or key person associated with the proposed project;

(12) A detailed description of the proposed project decommissioning, deconstruction, and disposal plan, and the anticipated costs associated therewith;

(13) An analysis of the market for any product (including but not limited to electricity and chemicals) to be produced by, or services to be provided by, the proposed project, including relevant economics justifying the analysis, and copies of

(i) Any contracts for the sale of such products or the provision of such services, or

(ii) Any other assurance of the revenues to be generated from sale of such products or provision of such services;

(14) A detailed description of the overall financial plan for the proposed project, including all sources and uses of funding, equity and debt, and the liability of parties associated with the proposed project over the term of the Loan Guarantee Agreement;

(15) A copy of all material agreements, whether entered into or proposed, relevant to the investment, design, engineering, financing, construction, startup commissioning, shakedown, operations and maintenance of the proposed project;

(16) A copy of the financial closing checklist for the equity and debt to the extent available;

(17) The Applicant's business plan on which the proposed project is based and Applicant's financial model with respect to the proposed project for the proposed term of the Guaranteed Obligations, including, as applicable, *pro forma* income statements, balance sheets, and cash flows. All such information and data must include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

(18) Financial statements for the three immediately preceding fiscal years of the Applicant (or such shorter period as the Applicant has been in existence) that have been audited by an independent certified public accounting firm, including all associated certifications, notes and letters to management, as well as interim financial statements and notes for the current fiscal year for the Applicant and all other Persons the credit of which is material to the success of the transactions described in the Application;

(19) A copy of all legal opinions, and other material reports, analyses, and reviews related to the proposed project that have been delivered prior to submission of any part of the Application;

(20) An independent engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should address the proposed project's siting and permitting arrangements, engineering and design, contractual requirements, environmental compliance, testing, commissioning and operations, and maintenance;

(21) A credit history of the Applicant and each Project Sponsor;

(22) A preliminary credit assessment for the proposed project without a loan guarantee from a nationally recognized rating agency for projects where the estimated total Project Costs exceed $25 million. For proposed projects where the total estimated Project Costs are $25 million or less and where conditions justify, in the sole discretion of the Secretary, DOE may require such an assessment;

(23) A list showing the status of and estimated completion date of Applicant's required applications for federal, state, and local permits, authorizations or approvals to site, construct, and operate the proposed project;

(24) A report containing an analysis of the potential environmental impacts of the proposed project that will enable DOE to—

(i) Assess whether the proposed project will comply with all applicable environmental requirements; and

(ii) Undertake and complete any necessary reviews under the National Environmental Policy Act of 1969;

(25) A listing and description of the assets of or to be utilized for the benefit of the proposed project, and of any other asset that will serve as collateral pledged in respect of the Guaranteed Obligations, including appropriate data as to the value of such assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the ''Uniform Standards of Professional Appraisal Practice,'' promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;

(26) An analysis demonstrating that, at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the Guaranteed Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based; and

(27) If proposed project assets or facilities are or will be jointly owned by the Applicant and one or more other Persons, each of which owns an undivided ownership interest in such proposed project assets or facilities, a description of the Applicant's rights and obligations in respect of its undivided ownership interest in such proposed project assets or facilities.

(d) During the Application evaluation process pursuant to § 609.5, DOE may request additional information, potentially including a preliminary credit rating or credit assessment, with respect to the proposed project.

(e) DOE will not consider any part of any Application or the Application as a whole complete unless the Application Fee (or the required portion of the Application Fee related to a particular part of the Application) has been paid. An Application Fee paid in connection with one Application is not transferable to another Application. Except in the discretion of DOE, no portion of the Application Fee is refundable;

(f) DOE has no obligation to evaluate an Application that is not complete, and may proceed with such evaluation, or a partial evaluation, only in its discretion.

(g) Unless an Applicant requests an extension and such an extension is granted by DOE in its discretion, an Application may be rejected if it is not complete within four years from the date of submission (or date of submission of the first part thereof, in the case of Applications made in more than one part).

(h) Upon making a determination to engage independent consultants or outside counsel with respect to an Application, DOE will proceed to evaluate and process such Application only following execution by an Applicant or Project Sponsor, as appropriate, of an agreement satisfactory

to DOE to pay the fees and expenses charged by the independent consultants and outside legal counsel.

§ 609.5 Programmatic, technical and financial evaluation of applications.

(a) In reviewing completed Applications, and in prioritizing and selecting those as to which a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, any applicable Solicitation, and this part. Applications will be considered in a competitive process, *i.e.* each Application will be evaluated against other Applications responsive to the Solicitation. Applications will be denied if:

(1) The proposed project is not an Eligible Project;

(2) The applicable technology is not ready to be deployed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the Application, does not have the potential to be deployed in other commercial projects in the United States, or is not or will not be available for further commercial use in the United States;

(3) The Person proposed to issue the loan or purchase other debt obligations constituting the Guaranteed Obligations is not an Eligible Lender;

(4) The proposed project is for demonstration, research, or development;

(5) Significant Equity for the proposed project will not be provided by the date of issuance of the Guaranteed Obligations, or such later time as DOE in its discretion may determine; or

(6) The proposed project does not present a reasonable prospect of repayment of the Guaranteed Obligations.

(b) If an Application has not been denied pursuant to § 609.5(a), DOE will evaluate the proposed Project based on the criteria set forth in the Act, any applicable Solicitation and the following:

(1) To what measurable extent the proposed project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouses gases, or contributes to the avoidance, reduction or sequestration of air pollutants or anthropogenic emissions of greenhouse gases;

(2) To what extent the technology to be deployed in the proposed project—

(i) Is ready to be deployed commercially in the United States, can be replicated, yields a commercially viable product or service in the use proposed in the proposed project, has potential to be deployed in other commercial projects in the United States, and is or will be available for further commercial use in the United States; and

(ii) Constitutes an important improvement in technology, as compared to available Commercial Technologies, used to avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases;

(3) To what extent the Applicant has a plan to advance or assist in the advancement of that technology into the commercial marketplace in the United States;

(4) The extent to which the level of proposed support in the Application is consistent with a reasonable prospect of repayment of the Guaranteed Obligations by considering, among other factors:

(i) The extent to which the requested amount of the loan guarantee, the requested amount of Guaranteed Obligations and, if applicable, the expected amount of any other financing or credit arrangements, are reasonable relative to the nature and scope of the proposed project;

(ii) The total amount and nature of the Project Costs and the extent to which Project Costs are to be funded by Guaranteed Obligations; and

(iii) The feasibility of the proposed project and likelihood that it will produce sufficient revenues to service its debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

(5) The likelihood that the proposed project will be ready for full commercial operations in the time frame stated in the Application;

(6) The amount of Equity committed and to be committed to the proposed project by the Borrower, the Project Sponsor, and other Persons;

(7) Whether there is sufficient evidence that the Borrower will diligently implement the proposed project, including initiating and completing the proposed project in a timely manner;

(8) Whether and to what extent the Applicant will rely upon other Federal and non-Federal Government assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the proposed project and how such assistance will impact the proposed project;

(9) The levels of safeguards provided to the Federal Government in the event of default through collateral, warranties, and other assurance of repayment described in the Application, including the nature of any anticipated intercreditor arrangements;

(10) The Applicant's, or the relevant contractor's, capacity and expertise to operate the proposed project successfully, based on factors such as financial soundness, management organization, and the nature and extent of corporate and individual experience;

(11) The ability of the proposed Borrower to ensure that the proposed project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;

(12) The levels of market, regulatory, legal, financial, technological, and other risks associated with the proposed project and their appropriateness for a loan guarantee provided by DOE;

(13) Whether the Application contains sufficient information, including a detailed description of the nature and scope of the proposed project and the nature, scope, and risk coverage of the loan guarantee sought to enable DOE to perform a thorough assessment of the proposed project; and

(14) Such other criteria that DOE deems relevant in evaluating the merits of an Application.

(c) After DOE completes its review and evaluation of a proposed project pursuant to § 609.5(b) and this part, DOE will notify the Applicant in writing of its determination whether to proceed with due diligence and negotiation of a Term Sheet in accordance with § 609.6. DOE will proceed only if it determines that the proposed project is highly qualified and suitable for a Guarantee. Upon written confirmation from the Applicant that it desires to proceed, DOE and the Applicant will commence negotiations.

(d) A determination by DOE not to proceed with a proposed project following evaluation pursuant to § 609.5(b) shall be final and non-appealable, but shall not prejudice the Applicant or other affected Persons from applying for a Guarantee in respect of a different proposed project pursuant to another, separate Application.

§ 609.6 Term sheets and conditional commitments.

(a) DOE, after negotiation of a Term Sheet with an Applicant, may offer such Term Sheet to an Applicant or such other Person that is an affiliate of the Applicant and that is acceptable to DOE. DOE's offer of a Term Sheet shall be in writing and signed by the Contracting Officer. DOE's negotiation of a Term Sheet imposes no obligation on the Secretary to offer a Term Sheet to the Applicant.

(b) DOE shall terminate its negotiations of a Term Sheet if it has not offered a Term Sheet in respect of an

Eligible Project within four years after the date of the written notification set forth in § 609.5(c), unless extended in writing in the discretion of the Contracting Officer.

(c) If and when the offeree specified in a Term Sheet satisfies all terms and conditions for acceptance of the Term Sheet, including written acceptance thereof and payment of all fees specified in § 609.11(f) and therein to be paid at or prior to acceptance of the Term Sheet, the Term Sheet shall become a Conditional Commitment. Each Conditional Commitment shall include an expiration date no more than two years from the date it is issued, unless extended in writing in the discretion of the Contracting Officer. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement.

(d) If, subsequent to execution of a Conditional Commitment, the financing arrangements of the Borrower, or in respect of an Eligible Project, change from those described in the Conditional Commitment, the Applicant shall promptly provide updated financing information in writing to DOE. All such updated information shall be deemed to be information submitted in connection with an Application and shall be subject to § 609.4(b). Based on such updated information, DOE may take one or more of the following actions:

(1) Determine that such changes are not material to the Borrower, the Eligible Project or DOE;

(2) Amend the Conditional Commitment accordingly;

(3) Postpone the expected closing date of the associated Loan Guarantee Agreement; or

(4) Terminate the Conditional Commitment.

§ 609.7 Closing on the loan guarantee agreement.

(a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE, after consultation with the Applicant, will set a closing date for execution of a Loan Guarantee Agreement.

(b) Prior to or on the closing date of a Loan Guarantee Agreement, DOE will ensure that:

(1) One of the following has occurred:

(i) An appropriation for the Credit Subsidy Cost has been made;

(ii) The Secretary has received from the Borrower payment in full for the Credit Subsidy Cost and deposited the payment into the Treasury; or

(iii) A combination of one or more appropriations under paragraph (b)(1)(i) of this section and one or more payments from the Borrower under paragraph (b)(1)(ii) of this section has been made that is equal to the Credit Subsidy Cost;

(2) Pursuant to section 1702(h) of the Act, DOE has received from the Applicant the remainder of the Facility Fee referred to in § 609.11(b);

(3) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the Guarantee;

(4) The Department of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;

(5) The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States;

(6) Each holder of the Guaranteed Obligations is an Eligible Lender, and the servicer of the Guaranteed Obligations meets the servicing performance requirements of § 609.9(b);

(7) DOE has determined the principal amount of the Guaranteed Obligations expected to be issued in respect of the Eligible Project, as estimated at the time of issuance, will not exceed 80 percent of the Project Costs of the Eligible Project;

(8) All conditions precedent specified in the Conditional Commitment are either satisfied or waived by the Contracting Officer and all other applicable contractual, statutory, and regulatory requirements have been satisfied or waived by the Contracting Officer. If the counterparty to the Conditional Commitment has not satisfied all such terms and conditions on or prior to the closing date of the Loan Guarantee Agreement, the Secretary may, in his discretion, set a new closing date, or terminate the Conditional Commitment; and

(9) Where the total Project Costs for an Eligible Project are projected to exceed $25 million, the Applicant must provide a credit rating from a nationally recognized rating agency reflecting the revised Conditional Commitment for the project without a Federal guarantee. Where total Project Costs are projected to be $25 million or less, the Secretary may, on a case-by-case basis, require a credit rating. If a credit rating is required, an updated rating must be provided to the Secretary not later than 30 days prior to closing.

§ 609.8 Loan guarantee agreement.

(a) Only a Loan Guarantee Agreement executed by the Contracting Officer can obligate DOE to issue a Guarantee in respect of Guaranteed Obligations.

(b) DOE is not bound by oral representations.

(c) Each Loan Guarantee Agreement shall contain the following requirements and conditions, and shall not be executed until the Contracting Officer determines that the following requirements and conditions are satisfied:

(1) The Federal Financing Bank shall be the only Eligible Lender in transactions where DOE guarantees 100 percent (but not less than 100 percent) of the principal and interest of the Guaranteed Obligations issued under a Loan Guarantee Agreement.

(i) Where DOE guarantees more than 90 percent of the Guaranteed Obligation, the guaranteed portion cannot be separated from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation if the loan is participated, syndicated or otherwise resold in the secondary market; and

(ii) Where DOE guarantees 90 percent or less of the Guaranteed Obligation, the guaranteed portion may be separated from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation, if the loan is participated, syndicated or otherwise resold in the secondary debt market;

(2) The Borrower shall be obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other debt of a Borrower over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the Eligible Project's major physical assets, as calculated in accordance with U.S. generally accepted accounting principles and practices. The non-guaranteed portion (if any) of any Guaranteed Obligations must be repaid *pro rata,* and on the same amortization schedule, with the guaranteed portion.

(3) If any financing or credit arrangement of the Borrower or relating to the Eligible Project, other than the Guaranteed Obligations, has an amortization period shorter than that of the Guaranteed Obligations, DOE shall have determined that the resulting financing structure allocates to DOE a reasonably proportionate share of the default risk, in light of:

(i) DOE's share of the total debt financing of the Borrower,

(ii) Risk allocation among the credit providers to the Borrower, and

(iii) Internal and external credit enhancements.

(4) The loan guarantee does not finance, either directly or indirectly tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code;

(5) The principal amount of the Guaranteed Obligations, when combined with funds from other sources

committed and available to the Borrower, shall be sufficient to pay for expected Project Costs (including adequate contingency amounts), the applicable items specified in § 609.10(b), and otherwise to carry out the Eligible Project;

(6) There shall be a reasonable prospect of repayment by the Borrower of the principal of and interest on the Guaranteed Obligations and all of its other debt obligations;

(7) The Borrower shall pledge collateral or surety determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations. Such collateral or security may include Eligible Project assets and assets not related to the Eligible Project;

(8) The Loan Guarantee Agreement and related documents shall include detailed terms and conditions that DOE deems necessary and appropriate to protect the interests of the United States in the case of default, including ensuring availability of all relevant intellectual property rights, technical data including software, and technology necessary for DOE or any Person selected by DOE, to complete, operate, convey, and dispose of the defaulted Borrower or the Eligible Project;

(9) The Guaranteed Obligations shall not be subordinate to other financing. Guaranteed Obligations are not subordinate to other financing if the lien on property securing the Guaranteed Obligations, together with liens that are *pari passu* with such lien, if any, take priority or precedence over other charges or encumbrances upon the same property and must be satisfied before such other charges are entitled to participate in proceeds of the property's sale. In DOE's discretion, Guaranteed Obligations may share a lien position with other financing;

(10) There is satisfactory evidence that the Borrower will diligently pursue the Eligible Project and is willing, competent, and capable of performing its obligations under the Loan Guarantee Agreement and the loan documentation relating to its other debt obligations;

(11) The Borrower shall have paid all fees and expenses due to DOE or the U.S. Government, including such amount of the Credit Subsidy Cost as may be due and payable from the Borrower pursuant to the Conditional Commitment, upon execution of the Loan Guarantee Agreement;

(12) The Borrower, any Eligible Lender, and each other relevant party shall take, and be obligated to continue to take, those actions necessary to perfect and maintain liens on collateral in respect of the Guaranteed Obligations;

(13) DOE or its representatives shall have access to the offices of the Borrower and the Eligible Project site at all reasonable times in order to monitor the—

(i) Performance by the Borrower of its obligations under the Loan Guarantee Agreement; and

(ii) Performance of the Eligible Project;

(14) DOE and Borrower have reached an agreement regarding the information that will be made available to DOE and the information that will be made publicly available;

(15) The Borrower shall have filed applications for or obtained any required regulatory approvals for the Eligible Project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, state, and local regulatory requirements;

(16) The Borrower shall have no delinquent Federal debt;

(17) The Project Sponsors have made or will make a significant Equity investment in the Borrower or the Eligible Project, and will maintain control of the Borrower or the Eligible Project as agreed in the LGA; and

(18) The Loan Guarantee Agreement and related agreements shall include such other terms and conditions as DOE deems necessary or appropriate to protect the interests of the United States.

(d) The Loan Guarantee Agreement shall provide that, in the event of a default by the Borrower:

(1) Interest on the Guaranteed Obligations shall accrue at the rate stated in the Loan Guarantee Agreement or the Loan Agreement, until DOE makes full payment of the defaulted Guaranteed Obligations and, except when such Guaranteed Obligations are funded through the Federal Financing Bank, DOE shall not be required to pay any premium, default penalties, or prepayment penalties; and

(2) The holder of collateral pledged in respect of the Guaranteed Obligations shall be obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery.

(e)(1) An Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of § 609.9. Such latter Eligible Lender shall be required to assume all servicing, monitoring and reporting requirements as provided in the Loan Guarantee Agreement. Any transfer of the servicing, monitoring, and reporting functions shall be subject to the prior written approval of DOE.

(2) The Secretary, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the right to receive payment under the Guaranteed Obligations, shall include in the Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guaranteed Obligations. Any contractual agent approved by the Secretary to perform this function may transfer or assign this responsibility only with the Secretary's prior written approval.

(f) Each Loan Guarantee Agreement shall require the Borrower to make representations and warranties, agree to covenants, and satisfy conditions precedent to closing and to each disbursement that, in each case, relate to its compliance with the Davis-Bacon Act and the Cargo Preference Act.

(g) The Applicant, the Borrower or the Project Sponsor must estimate, calculate, record, and provide to DOE any time DOE requests such information and at the times provided in the Loan Guarantee Agreement all costs incurred in the design, engineering, financing, construction, startup, commissioning and shakedown of the Eligible Project in accordance with generally accepted accounting principles and practices.

§ 609.9 Lender servicing requirements.

(a) When reviewing and evaluating a proposed Eligible Project, all Eligible Lenders (other than the Federal Financing Bank) shall at all times exercise the level of care and diligence that a reasonable and prudent lender would exercise when reviewing, evaluating and disbursing a loan made by it without a Federal guarantee.

(b) Loan servicing duties shall be performed by an Eligible Lender, DOE, or another qualified loan servicer approved by DOE. When performing its servicing duties, the loan servicer shall at all times exercise the level of care and diligence that a reasonable and prudent lender would exercise when servicing a loan made without a Federal guarantee, including:

(1) During the construction period, monitoring the satisfaction of all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement or related documents;

(2) During the operational phase, monitoring and servicing the Guaranteed Obligations and collection of the outstanding principal and accrued interest as well as undertaking to ensure that the collateral package

securing the Guaranteed Obligations remains uncompromised; and

(3) Until the Guaranteed Obligation has been repaid, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or its other debt obligations.

§ 609.10 Project costs.

(a) Project Costs include:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility;

(3) Costs of equipment purchases, including a reasonable reserve of spare parts to the extent required;

(4) Costs to provide facilities and services related to safety and environmental protection;

(5) Costs of financial, legal, and other professional services, including services necessary to obtain required licenses and permits and to prepare environmental reports and data;

(6) Costs of issuing Eligible Project debt, such as fees, transaction, and costs referred to in § 609.10(a)(5), and other customary charges imposed by Eligible Lenders;

(7) Costs of necessary and appropriate insurance and bonds of all types including letters of credit and any collateral required therefor;

(8) Costs of design, engineering, startup, commissioning and shakedown;

(9) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the Eligible Project;

(10) To the extent required by the Loan Guarantee Agreement and not intended or available for any cost referred to in § 609.10(b), costs of funding any reserve fund, including without limitation, a debt service reserve, a maintenance reserve, and a contingency reserve for cost overruns during construction; provided that proceeds of a Guaranteed Loan deposited to any reserve fund shall not be removed from such fund except to pay Project Costs, to pay principal of the Guaranteed Loan, or otherwise to be used as provided in the Loan Guarantee Agreement;

(11) Capitalized interest necessary to meet market requirements and other carrying costs during construction; and

(12) Other necessary and reasonable costs.

(b) Project Costs do not include:

(1) Fees and commissions charged to Borrower, including finder's fees, for obtaining Federal or other funds;

(2) Parent corporation or other affiliated entity's general and administrative expenses, and non-Eligible Project related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Goodwill, franchise, trade, or brand name costs;

(4) Dividends and profit sharing to stockholders, employees, and officers;

(5) Research, development, and demonstration costs of readying an innovative technology for employment in a commercial project;

(6) Costs that are excessive or are not directly required to carry out the Eligible Project, as determined by DOE;

(7) Expenses incurred after startup, commissioning, and shakedown before the facility, or, in DOE's discretion, any portion of the facility, has been placed in service;

(8) Borrower-paid Credit Subsidy Costs, the Administrative Cost of Issuing a Loan Guarantee, and any other fee collected by DOE; and

(9) Operating costs.

§ 609.11 Fees and charges.

(a) Unless explicitly authorized by statute, no funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay for the Credit Subsidy Cost, the Application Fee, the Facility Fee, the Guarantee Fee, the maintenance fee and any other fees charged by or paid to DOE relating to the Act or any Guarantee thereunder.

(b) DOE may charge Applicants a non-refundable Facility Fee, with a portion being payable on or prior to the date on which the Applicant executes the Commitment Letter and the remainder being payable on or prior to the closing date for the Loan Guarantee Agreement.

(c) In order to encourage and supplement private lending activity DOE may collect from Borrowers for deposit in the United States Treasury a non-refundable Risk-Based Charge which, together with the interest rate on the Guaranteed Obligation that LPO determines to be appropriate, will take into account the prevailing rate of interest in the private sector for similar loans and risks. The Risk-Based Charge shall be paid at such times and in such manner as may be determined by DOE, but no less frequently than once each year, commencing with payment of a pro-rated payment on the date the Guarantee is issued. The amount of the Risk-Based Charge will be specified in the Loan Guarantee Agreement.

(d) DOE may collect a maintenance fee to cover DOE's administrative expenses, other than extraordinary expenses, incurred in servicing and monitoring a Loan Guarantee Agreement. The maintenance fee shall accrue from the date of execution of the Loan Guarantee Agreement through the date of payment in full of the related Guaranteed Obligations. If DOE determines to collect a maintenance fee, it shall be paid by the Borrower each year (or portion thereof) in advance in the amount specified in the applicable Loan Guarantee Agreement.

(e) In the event a Borrower or an Eligible Project experiences difficulty relating to technical, financial, or legal matters or other events (*e.g.,* engineering failure or financial workouts), the Borrower shall be liable as follows:

(1) If such difficulty requires DOE to incur time or expenses beyond those customarily expended to monitor and administer performing loans, DOE may collect an extraordinary expenses fee from the Borrower that will reimburse DOE for such time and expenses, as determined by DOE; and

(2) For all fees and expenses of DOE's independent consultants and outside counsel, to the extent that such fees and expenses are elected to be paid by DOE notwithstanding the provisions of paragraphs (f) and (g) of this section.

(f) Each Applicant, Borrower or Project Sponsor, as applicable, shall be responsible for the payment of all fees and expenses charged by DOE's independent consultants and outside legal counsel in connection with an Application, Conditional Commitment or Loan Guarantee Agreement, as applicable. Upon making a determination to engage independent consultants or outside counsel with respect to an Application, DOE will proceed to evaluate and process such Application only following execution by an Applicant or Project Sponsor, as appropriate, of an agreement satisfactory to DOE to pay the fees and expenses charged by the independent consultants and outside legal counsel. Appropriate provisions regarding payment of such fees and expenses shall also be included in each Term Sheet and Loan Guaranty Agreement or, upon a determination by DOE, in other appropriate agreements.

(g) Notwithstanding payment by Applicant, Borrower or Project Sponsor, all services rendered by an independent consultant or outside legal counsel to DOE in connection with an Application, Conditional Commitment or Loan Guarantee Agreement shall be solely for the benefit of DOE (and such other creditors as DOE may agree in writing). DOE may require, in its discretion, the payment of an advance retainer to such independent consultants or outside legal counsel as security for the collection of the fees and expenses charged by the independent consultants and outside legal counsel. In the event an Applicant, Borrower or Project Sponsor fails to comply with the provisions of such payment agreement, DOE in its discretion, may stop work on or terminate an Application, a Conditional Commitment or a Loan Guarantee Agreement, or may take such other remedial measures in its discretion as it deems appropriate.

(h) DOE shall not be financially liable under any circumstances to any independent consultant or outside counsel for services rendered in connection with an Application, Conditional Commitment or Loan Guarantee Agreement except to the extent DOE has previously entered into an express written agreement to pay for such services.

§ 609.12 Full faith and credit and incontestability.

The full faith and credit of the United States is pledged to the payment of principal and interest of Guaranteed Obligations pursuant to Guarantees issued in accordance with the Act and this Part. The issuance by DOE of a Guarantee shall be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such Guarantee; and that, but for fraud or material misrepresentation by the Holder, such Guarantee shall be legal, valid, binding and enforceable against DOE in accordance with its terms.

§ 609.13 Default, demand, payment, and foreclosure on collateral.

(a) If a Borrower defaults in making a required payment of principal or interest on a Guaranteed Obligation and such default has not been cured within the applicable grace period, the Holder may make written demand for payment upon the Secretary in accordance with the terms of the applicable Guarantee. If a Borrower defaults in making a required payment of principal or interest on a Guaranteed Obligation and such default has not been cured within the applicable grace period, the Secretary shall notify the Attorney General.

(b) Subject to the terms of the applicable Guarantee, the Secretary shall make payment within 60 days after receipt of written demand for payment from the Holder, provided that the demand for payment complies in all respects with the terms of the applicable Guarantee. Interest shall accrue to the Holder at the rate stated in the promissory note evidencing the Guaranteed Obligation, without giving effect to the Borrower's default in making a required payment of principal or interest on the applicable Guarantee Obligation or any other default by the Borrower, until the Guaranteed Obligation has been fully paid by DOE. Payment by the Secretary on the applicable Guarantee does not change Borrower's obligations under the promissory note evidencing the Guaranteed Obligation, Loan Guarantee Agreement, Loan Agreement or related documents, including an obligation to pay default interest.

(c) Following payment by the Secretary pursuant to the applicable Guarantee, upon demand by DOE, the Holder shall transfer and assign to the Secretary (or his designee or agent) the promissory note evidencing the Guaranteed Obligation, all rights and interests of the Holder in the Guaranteed Obligation, and all rights and interests of the Holder in respect of the Guaranteed Obligation, except to the extent that the Secretary determines that such promissory note or any of such rights and interests shall not be transferred and assigned to the Secretary. Such transfer and assignment shall include, without limitation, all of the liens, security and collateral rights of the Holder (or his designee or agent) in respect of the Guaranteed Obligation.

(d) Following payment by the Secretary pursuant to a Guarantee or other default of a Guaranteed Obligation, the Secretary is authorized to protect and foreclose on the collateral, take action to recover costs incurred by, and all amounts owed to, the United States as a result of the defaulted Guarantee Obligation, and take such other action necessary or appropriate to protect the interests of the United States. In respect of any such authorized actions that involve a judicial proceeding or other judicial action, the Secretary shall act through the Attorney General. The foregoing provisions of this paragraph shall not relieve the Secretary from its obligations pursuant to any applicable Intercreditor Agreement. Nothing in this paragraph shall limit the Secretary from exercising any rights or remedies pursuant to the terms of the Loan Guarantee Agreement.

(e) The cash proceeds received as a result of any foreclosure on the collateral, or other action, shall be distributed in accordance with the Loan Guarantee Agreement (subject to any applicable Intercreditor Agreement).

(f) The Loan Guarantee Agreement shall provide that cash proceeds received by the Secretary (or his designee or agent) as a result of any foreclosure on the collateral or other action shall be applied in the following order of priority:

(1) Toward the pro rata payment of any costs and expenses (including unpaid fees, fees and expenses of counsel, contractors and agents, and liabilities and advances made or incurred) of the Secretary, the Attorney General, the Holder, a collateral agent or other responsible person of any of them (solely in their individual capacities as such and not on behalf of or for the benefit of their principals), incurred in connection with any authorized action following payment by the Secretary pursuant to a Guarantee or other default of a Guaranteed Obligation, or as otherwise permitted under the Loan Agreement or Loan Guarantee Agreement.

(2) To pay all accrued and unpaid fees due and payable to the Secretary, the Attorney General, the Holder, a collateral agent or other responsible person of any of them on a pro rata basis in respect of the Guaranteed Obligation;

(3) To pay all accrued and unpaid interest due and payable to the Secretary, the Attorney General, the Holder, a collateral agent or other responsible person of any of them on a pro rata basis in respect of the Guaranteed Obligation;

(4) To pay all unpaid principal of the Guaranteed Obligation;

(5) To pay all other obligations of the Borrower under the Loan Guarantee Agreement, the Loan Agreement and related documents that are remaining after giving effect to the preceding provisions and are then due and payable; and;

(6) To pay to the Borrower, or its successors and assigns, or as a court of competent jurisdiction may direct, any cash proceeds then remaining following the application of all payment described above.

(g) No action taken by the Holder or its agent or designee in respect of any collateral will affect the rights of any person, including the Secretary, having an interest in the Guaranteed Obligations or other debt obligations, to pursue, jointly or severally, legal action against the Borrower or other liable

persons, for any amounts owing in respect of the Guaranteed Obligation or other applicable debt obligations.

(h) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with exercise of rights as a lien holder or recovery of deficiencies due under the Guaranteed Obligation, the Secretary may take such action as he determines to be appropriate under the circumstances.

(i) Nothing in this part precludes, nor shall any provision of this part be construed to preclude, the Secretary from purchasing any collateral or Holder's or other Person's interest in the Eligible Project upon foreclosure of the collateral.

(j) Nothing in this part precludes, nor shall any provision of this part be construed to preclude, forbearance by any Holder with the consent of the Secretary for the benefit of the Borrower and the United States.

(k) The Holder and the Secretary may agree to a formal or informal plan of reorganization in respect of the Borrower, to include a restructuring of the Guaranteed Obligation and other applicable debt of the Borrower on such terms and conditions as the Secretary determines are in the best interest of the United States.

§ 609.14 Preservation of collateral.

(a) If the Secretary exercises his right under the Loan Guarantee Agreement to require the holder of pledged collateral to take such actions as the Secretary (subject to any applicable Intercreditor Agreement) may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the collateral, the Secretary shall, subject to compliance with the Antideficiency Act, 31 U.S.C. 1341 *et seq.,* reimburse the holder of such collateral for reasonable and appropriate expenses incurred in taking actions required by the Secretary (unless otherwise provided in applicable agreements). Except as provided in § 609.13, no party may waive or relinquish, without the consent of the Secretary, any such collateral to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

(b) In the event of a default, the Secretary may enter into such contracts as he determines are required or appropriate, taking into account the term of any applicable Intercreditor Agreement, to care for, preserve, protect or maintain collateral pledged in respect of Guaranteed Obligations. The cost of such contracts may be charged to the Borrower.

§ 609.15 Audit and access to records.

Each Loan Guarantee Agreement and related documents shall provide that:

(a) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the Eligible Project as are necessary, including the Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all Eligible Project assets and non-Eligible Project assets pledged in respect of the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all Eligible Project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Borrower or the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the Eligible Project; and

(b) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

§ 609.16 Deviations.

(a) To the extent that the requirements under this part are not specified by the Act or other applicable statutes, DOE may authorize deviations from the requirements of this part upon:

(1) Either receipt from the Applicant, Borrower or Project Sponsor, as applicable, of—

(i) A written request that the Secretary deviate from one or more requirements; and

(ii) A supporting statement briefly describing one or more justifications for such deviation; or

(iii) A determination by the Secretary in his discretion to undertake a deviation;

(2) A finding by the Secretary that such deviation supports program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the Government; and

(3) If the waiver would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents, consultation by DOE with OMB and the Secretary of the Treasury.

(b) If a deviation under this section results in an increase in the applicable Credit Subsidy Cost, such increase shall be funded either by additional fees paid by or on behalf of the Borrower or, if an appropriation is available by means of an appropriations act. The Secretary has discretion to determine how the cost of a deviation is funded.

[FR Doc. 2016–30006 Filed 12–14–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 161110999–6999–01]

RIN 0694–AH21

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by adding seven persons to the Entity List. The seven persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These seven persons will be listed on the Entity List under the destination of Pakistan.

DATES: This rule is effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744) identifies entities and other

persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability, of most license exceptions for, exports, reexports, and transfers (in-country) to those listed. The ''license review policy'' for each listed entity or other person is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add seven persons to the Entity List. These seven persons are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The seven entries added to the entity list consist of seven entries in Pakistan.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these seven persons to the Entity List. Under that paragraph, persons and those acting on behalf of such persons may be added to the Entity List if there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States. Paragraphs (b)(1) through (5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

Pursuant to § 744.11(b) of the EAR, the ERC determined that seven persons, located in the destination of Pakistan, be added to the Entity List for actions contrary to the national security or foreign policy interests of the United States. The ERC determined that there is reasonable cause to believe, based on specific and articulable facts, that Ahad International; Engineering Solutions Pvt. Ltd.; National Engineering and Scientific Commission (NESCOM); three NESCOM subsidiaries: Air Weapons Complex (AWC), Maritime Technology Complex (MTC) and New Auto Engineering (NAE); and Universal Tooling Services, have been involved in actions contrary to the national security or foreign policy interests of the United States. These government, parastatal, and private entities in Pakistan are determined to be involved in activities that are contrary to the national security and/or foreign policy of the United States.

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of these seven persons raises sufficient concern that prior review of exports, reexports or transfers (in-country) of items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR. Therefore, these seven persons are being added to the Entity List.

For the seven persons added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to help exporters, reexporters and transferors better identify listed persons on the Entity List.

This final rule adds the following seven persons to the Entity List:

Pakistan

(1) *Ahad International,*
Suite #5–6, 2nd Floor, Empress Tower, Empress Road, Lahore-54000, Pakistan; *and* 11–12–13, 2nd Floor, Nomro Center, Badami Bagh, Lahore, Pakistan;

(2) *Air Weapons Complex (AWC),*
AWC: E–5, Officers Colony, Wah Cantt, Punjab, Pakistan;

(3) *Engineering Solutions Pvt. Ltd.,*
726, G–11/2. Ibne-Sina Road, Islamabad, Pakistan;

(4) *Maritime Technology Complex (MTC),*
MTC: Plot 94, Karachi, Pakistan; *and*
MTC: System Division, PN Dockyard, Karachi, Pakistan;

(5) *National Engineering and Scientific Commission (NESCOM),*
NESCOM Head Quarter, Plot #94, Sector H–11/4, Islamabad, Pakistan;

(6) *New Auto Engineering (NAE),*
NAE: 72, Industrial Area, Peshawar Road, Rawalpindi, Pakistan; *and*

(7) *Universal Tooling Services,* a.k.a., the following three aliases:
—Forward Design and Manufacturing;
—MSM Enterprises; *and*
—Technopak Engineering.
Deen Plaza, 68/62, Adamjee Road, Saddar P.O. Box 1640, GPO Rawalpindi, Pakistan; *and* G–7, Nimra Centre 7, Badami Bagh, Lahore, Pakistan; *and* 31/B Faisal Town, Lahore, Punjab, Pakistan; *and* Model Town, HMC Road, Taxila, Pakistan.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on December 15, 2016, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable to this rule because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, the entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity List and would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Supplement No. 4 to part 744 is amended by adding under Pakistan, in alphabetical order, seven Pakistani entities to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* *	*
PAKISTAN				
	* * *	*	* *	*
	Ahad International, Suite #5–6, 2nd Floor, Empress Tower, Empress Road, Lahore-54000, Pakistan; *and.* 11–12–13, 2nd Floor, Nomro Center, Badami Bagh, Lahore, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 12/15/16.
	Air Weapons Complex (AWC), AWC: E–5, Officers Colony, Wah Cantt, Punjab, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 12/15/16.
	* * *	*	* *	*
	Engineering Solutions Pvt. Ltd., 726, G–11/2. Ibne-Sina Road, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 12/15/16.
	* * *	*	* *	*
	Maritime Technology Complex (MTC), MTC: Plot 94, Karachi, Pakistan; *and* MTC: System Division, PN Dockyard, Karachi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 12/15/16.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	* *	*	* *	*
	National Engineering and Scientific Commission (NESCOM), NESCOM Head Quarter, Plot #94, Sector H–11/4, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 12/15/16.
	* *	*	* *	*
	New Auto Engineering (NAE), NAE: 72, Industrial Area, Peshawar Road, Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 12/15/16.
	* *	*	* *	*
	Universal Tooling Services, a.k.a., the following three aliases: —Forward Design and Manufacturing; —MSM Enterprises; *and* —Technopak Engineering. Deen Plaza, 68/62, Adamjee Road, Saddar P.O. Box 1640, GPO Rawalpindi, Pakistan; *and* —G–7, Nimra Centre 7, Badami Bagh, Lahore, Pakistan; *and* 31/B Faisal Town, Lahore, Punjab, Pakistan; *and* Model Town, HMC Road, Taxila, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 12/15/16.
	* *	*	* *	*
*	* *	*	* *	*

Dated: December 8, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–30061 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–33–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2004

[Docket Number USTR–2016–0015]

RIN 0350–AA08

Freedom of Information Act Policies and Procedures

AGENCY: Office of the United States Trade Representative.

ACTION: Final rule.

SUMMARY: This rule amends the Office of the United States Trade Representative's (USTR) regulations under the Freedom of Information Act (FOIA). The final rule is a comprehensive update of the prior USTR implementing rule and describes in plain language how to make a FOIA request to USTR and how the FOIA Office processes requests for records. The FOIA rule appears in subpart B to part 2004.

DATES: The final rule will become effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Janice Kaye, Monique Ricker or Melissa Keppel, Office of General Counsel, United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509, *jkaye@ustr.eop.gov; mricker@ustr.eop.gov; mkeppel@ustr.eop.gov,* or the USTR FOIA Public Liaison at *FOIA@ustr.eop.gov* or 202–395–3419.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 2016, USTR published a proposed rule to revise its existing regulations under the FOIA. *See* 81 FR 65586. The 60-day comment period ended on November 22, 2016. USTR received two submissions, one public comment and feedback from the U.S. Department of Justice (DoJ). The USTR rule is modeled after a template provided by DoJ. We have carefully considered both submissions and, in response, we have made several modifications to the rule, described in more detail in part II. The rule is effective upon publication to meet the requirement that we update our FOIA implementing regulation by December 30, 2016, found in section 3 of the FOIA Improvement Act of 2016. *See* Public Law 114–185, 130 Stat. 544 (June 30, 2016). For convenience, the entire text of the final rule is set out below.

II. Section-by-Section Analysis

Section 2004.1: In response to suggestions from DoJ, we have retained only the first sentence in subsection (c) to avoid inconsistencies with the foreseeable harm standard in the FOIA statute, 5 U.S.C. 552(a)(8).

Section 2004.2: In response to suggestions from DoJ, we added ''in an electronic format'' after ''for public inspection and copying'' for consistency with the language of the FOIA statute.

Section 2004.3: In subsection (a)(3), we combined paragraphs (i) and (ii) and eliminated the requirement for notarization to verify identity and renumbered paragraph (iii) as paragraph (ii). In subsection (b) in response to suggestions from DoJ, we eliminated paragraph (3) and clarified our suggestions for submitting a carefully tailored FOIA request so USTR can identify the records sought and expeditiously process the request.

Section 2004.5: In response to suggestions from DoJ, we made clarifying changes in subsection (a) and eliminated the language about discretionary releases in subsection (b) to avoid any inconsistences with the statutory foreseeable harm standard, 5 U.S.C. 552(a)(8).

Section 2004.6: In response to suggestions from DoJ, we added a reminder in subsection (a) that the response time to a FOIA request is measured in working days, not calendar

days. In subsection (c) we deleted ''such as'' since unusual circumstances are defined by statute, 5 U.S.C. 552(a)(6)(B). We also added that when we need additional processing time, we will notify a requester of the services of our FOIA Public Liaison and the Office of Government Information Services of the National Archives and Records Administration (OGIS). We added a definition of the term ''OGIS'' to subpart A of part 2004.

Section 2004.7: In response to suggestions from DoJ, we added references to the services of our FOIA Public Liaison and OGIS in subsections (c) and (d). In subsection (b), we indicated that we might ask for clarification of a FOIA request. The public comment, which suggested that we include information about the subject of the request in our response, already is included in subsection (b).

Section 2004.9: We made several clarifying changes to the section on fees. In response to a 2016 decision (*Sack* v. *U.S. Department of Defense,* 823 F.3d 687 (D.C. Cir. 2016)), we revised the definition of ''education institution'' in subsection (b)(4) to include students and made conforming changes to Example 3. With respect to search fees ((paragraph (c)(1)(ii)), to provide certainty we replaced a variable fee for a set amount—$76/hour—that is a blended hourly rate for all personnel in the FOIA Office, plus 16 percent of that rate to cover benefits. In response to the public comment, we reduced the per page cost we will charge for duplicating records from 15 to 10 cents. We believe subsection (e) on aggregating requests is accurate as proposed and have made no changes. In subsection (f), we believe the $25 threshold is appropriate. When we notify a requester that fees will exceed $25, we will provide a breakdown of the fees and advise if we can readily estimate only a portion of the fee. In subsection (f)(3), we have deleted language that would have placed reformulated requests at the back of the processing queue. In response to a 2015 decision (*Cause of Action* v. *Federal Trade Commission,* 799 F.3d 1108 (D.C. Cir. 2015)), we clarified in subsection (h)(ii), that disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject and not the public-at-large.

III. Regulatory Flexibility Act

USTR has considered the impact of the final rule and determined that it is not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to USTR's internal operations and legal obligations. *See* 5 U.S.C. 601 *et seq.*

IV. Paperwork Reduction Act

The final rule 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.*).

List of Subjects in 15 CFR Part 2004

Administrative practice and procedure, Courts, Disclosure, Exemptions, Freedom of information, Government employees, Privacy, Records, Subpoenas, Testimony.

For the reasons stated in the preamble, the Office of the United States Trade Representative is amending chapter XX of title 15 of the Code of Federal Regulations as follows:

PART 2004—DISCLOSURE OF RECORDS AND INFORMATION

Subpart B—Freedom of Information Act Policies and Procedures

■ 1. Add the subpart B authority citation to read as follows:

Authority: 5 U.S.C. 552; 19 U.S.C. 2171(e)(3); Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987.

■ 2. Add §§ 2004.1 through 2004.9 to subpart B to read as follows:

Sec.

2004.1 Purpose and scope.
2004.2 Proactive disclosures.
2004.3 How do I make a request for records under the FOIA?
2004.4 How will we handle confidential commercial information?
2004.5 Who is responsible for responding to your FOIA request?
2004.6 When will we respond to your FOIA request?
2004.7 What will our response to your FOIA request include?
2004.8 What can I do if I am dissatisfied with USTR's response to my FOIA request?
2004.9 Fees.

§ 2004.1 Purpose and scope.

(a) This subpart contains the rules we follow when processing requests for records under the FOIA, a Federal law that provides a right of access to certain records and information Federal agencies maintain and control. You should read this subpart in conjunction with the text of the FOIA and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines). Additionally, our FOIA Reference Guide, which is available on our Web site at *http://www.ustr.gov,* contains information about the specific procedures for making FOIA requests and descriptions of the types of records we maintain.

(b) To maximize the amount of information we can provide to you, we may process requests you make for records about yourself under both this subpart and subpart C to part 2004, our rules implementing the Privacy Act.

(c) We administer the FOIA with a presumption of openness.

§ 2004.2 Proactive disclosures.

You can access records that the FOIA requires us to make available for public inspection and copying in an electronic format through our Web site: *http://www.ustr.gov.* You also can find press releases, links to **Federal Register** notices and comments, fact sheets, speeches and remarks, reports, information about current initiatives, and historical information about U.S. trade issues. If you need assistance to locate a particular record, you can contact the Office of Public and Media Affairs at *MEDIA@ustr.eop.gov* or the FOIA Office at *FOIA@ustr.eop.gov.*

§ 2004.3 How do I make a request for records under the FOIA?

(a) *General information*—(1) *Where do I send my written request?* To make a request for records, you should write directly to the FOIA Office. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your request to *FOIA@ustr.eop.gov.* Our mailing address is: FOIA Office, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509. To ensure that the FOIA Office receives your request without delay, you should include the notation ''FOIA Request'' in the subject line of your email or on the front of your envelope and also at the beginning of your request.

(2) *Security concerns.* To protect our computer systems, we will not open attachments to emailed requests—you must include your request within the body of the email. We will not process email attachments.

(3) *Verifying your identity.* (i) If you are making a request for records about yourself or about another individual, you may receive greater access by verifying your identity if the records are about you, or the other individual's identity if the records are about them. To verify identity, you must provide an unsworn declaration under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury. To fulfill this requirement, you must include the following statement just

before the signature on your request letter:

''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

(ii) If the other individual is deceased, you should submit proof of death such as a copy of a death certificate or an obituary. As an exercise of administrative discretion, we may require that you provide additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *How do I describe the records I want?* (1) You must describe the records you seek in sufficient detail to enable USTR personnel to locate them with a reasonable amount of effort. To satisfy this requirement, you should be as detailed as possible when describing the records you seek. To the extent possible, you should include specific information that may help us identify the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. For example, we generally will ask you to clarify a request for all records related to a particular trade negotiation or agreement or a request for all communications between USTR and a particular third party. We suggest that you include a date limitation, particular topics, and if asking for correspondence, the subject matter and the relevant parties with contact information such as their email addresses.

(2) If a request does not provide sufficient specific descriptive information for the FOIA Office reasonably to ascertain exactly which records you are requesting and to locate them, our response may be delayed. Please note that in response to a FOIA request, we are not required to create records, conduct research for you, analyze data, answer written questions, or parse your narrative to try and determine the specific records you are seeking. You can contact the FOIA Office before you submit your request for assistance in describing the records you are seeking. If we determine that your request does not reasonably describe the records sought, we will explain why we cannot process your request and ask for additional information. For example, we might ask you to clarify your request if you ask for all documents in a certain date range but do not include a specific subject matter, topic or personnel. We can help you reformulate or modify your request.

(c) *Form or format of responsive records.* You can specify the preferred form or format (including electronic formats) for the records you seek. We will try to accommodate your request if the record is readily reproducible in that form or format.

(d) *Contact information.* You must provide contact information, such as your phone number, email address, and mailing address, so we will be able to communicate with you about your request and provide released records. If we cannot contact you, or you do not respond within thirty calendar days to our requests for clarification, we will close your request.

§ 2004.4 How will we handle confidential commercial information?

(a) *Definitions.* For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information that we obtain from a submitter that may be protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation or a State or foreign government, but not including another Federal Government entity, which provides information, either directly or indirectly to the Federal Government.

(b) *How does a submitter designate confidential commercial information?* At the time of submission, the submitter of confidential commercial information must use good faith efforts to designate by appropriate markings any portion of its submission that it considers to be protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). These designations expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When will we notify a submitter?* (1) We promptly will notify the submitter of confidential commercial information in writing whenever we receive a FOIA request or appeal for records containing such information if we determine that we may have to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4); or

(ii) We have reason to believe that the requested information may be protected from disclosure exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), but have not yet determined whether the information is protected from disclosure under that exemption or any other applicable FOIA exemption.

(2) Our notice either will describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, we may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure without publicly disclosing the records, instead of sending individual notifications.

(3) We promptly will notify the submitter whenever a requester files a lawsuit seeking to compel the disclosure of the submitter's confidential commercial information.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) We determine that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has officially been made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987, *Predisclosure notification procedures for confidential commercial information;* or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, we will give the submitter written notice of any final decision to disclose the information and a reasonable time period within which to object to disclosure under paragraph (e) of this section.

(e) *How can a submitter object to disclosure?* (1) If a submitter has any objections to disclosure, it should provide to us within the period listed in the notice a detailed written statement that specifies all grounds for withholding the particular information under any FOIA exemption. In order to rely on exemption 4 as a basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

(2) A submitter who does not respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. We will not consider any information we receive after the date of any disclosure decision. Any information provided by the submitter under this section may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* We will consider the submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* We will notify the submitter whenever we decide to disclose information over the submitter's objection. Our written notice will include:

(1) A statement of the reasons why we did not sustain each of the submitter's disclosure objections;

(2) A description of the information to be disclosed or copies of the records as we intend to release them; and

(3) A specified disclosure date, which will be a reasonable time after the notice.

(h) *When will we notify a requester?* We will notify the requester whenever we provide the submitter with notice and an opportunity to object to disclosure; whenever we notify the submitter of our intent to disclose the requested information; and whenever the submitter files a lawsuit to prevent the disclosure of the information.

§ 2004.5 Who is responsible for responding to your FOIA request?

(a) *In general.* The FOIA Office is authorized to grant or to deny any requests for agency records that USTR maintains. In determining which records are responsive to a request, we ordinarily will include only the agency records in our possession as of the date that we begin our search. We will notify you if we use any other date.

(b) *Consultation, referral and coordination.* If we believe that another Federal agency is better able to determine whether a record we locate in response to your request is exempt from disclosure under the FOIA, then we will proceed in one of the following ways:

(1) *Consultation.* When records originated with USTR but contain within them information of significance to another Federal agency or office, we typically consult with that other entity prior to making a release determination.

(2) *Referral.* If we believe that a different Federal agency is best able to determine whether to disclose the record, we typically refer responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. Whenever we refer any part of the responsibility for responding to a request to another agency, we will notify you of the referral, including the name of the agency and that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the Federal agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, we will coordinate with the originating agency to seek its views on disclosure of the record. We then will notify you of the release determination for the record that is the subject of the coordination.

(c) *Classified information.* On receipt of any request involving classified information, we will determine whether the information is currently and properly classified. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another Federal agency, we will refer responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), we will refer responsibility for responding to that portion of the request to the agency that classified the underlying information.

(d) *Timing of responses to consultations and referrals.* We will handle all consultations and referrals we receive according to the date that the first agency received the perfected FOIA request.

(e) *Agreements regarding consultations and referrals.* We may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 2004.6 When will we respond to your FOIA request?

(a) *In general.* We ordinarily will respond to a request within twenty working days based on the order in which we receive the request. We may toll the twenty-day period if we need additional information from you in order to process the request or need to clarify fee assessment issues.

(b) *Multitrack processing.* We use a multitrack processing system that distinguishes between simple and more complex requests based on the estimated amount of work or time we need to process the request. Among the factors we consider are the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. We will tell you if we place your request into other than the simple track, and if appropriate, we will offer you an opportunity to narrow or modify your request so that it can be placed in a different processing track.

(c) *Unusual circumstances*—(1) *What is an unusual circumstance?* We will notify you if we extend the twenty-day period for processing your request. The notice will include the unusual circumstances—the need to search for and collect the requested records from separate offices or facilities, a request that involves a voluminous amount of separate and distinct records, or the need for consultation, and the date by which we estimate we will complete processing your request. If the extension exceeds ten days, we will give you the opportunity to modify your request or arrange an alternative time period for processing the original or modified request. If you need assistance, you can contact our FOIA Public Liaison at *FOIA@ustr.eop.gov,* or OGIS at *OGIS@nara.gov.*

(2) *Aggregating requests.* We may aggregate requests if it reasonably appears that multiple requests submitted either by a single requester or by a group of requesters acting in concert, involve related matters and constitute a single request that otherwise would involve unusual circumstances. For example, we may aggregate multiple requests for similar information filed within a short period of time.

(d) *Expedited processing*—(1) *How do I request expedited processing?* When you submit your request or appeal, you can ask us to expedite processing. If you seek expedited processing, you must submit a statement, certified to be true and correct, explaining in detail the basis for your expedited processing request.

(2) *When will we grant expedited processing?* We will process requests and appeals on an expedited basis if we determine that:

(i) Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about the specific government activity that is the subject of the request or appeal that extends beyond the public's right to know about government activity generally;

(iii) An individual will suffer the loss of substantial due process rights; or

(iv) the subject is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity that affect public confidence.

(3) *When will we respond to your request for expedited processing?* We will notify you within ten calendar days of the receipt of a request for expedited processing of our decision whether to grant or deny expedited processing. If we grant your request, we will give your request or appeal priority, place it in the processing track for expedited requests, and process it as soon as practicable. If we deny your request, we will process any appeal of that decision expeditiously.

§ 2004.7 What will our response to your FOIA request include?

(a) *In general.* We will notify you in writing of our determination regarding your request. To the extent practicable, we will communicate with you electronically.

(b) *Acknowledgement of requests.* We will acknowledge your request in writing, including a brief description of the records you are seeking, and assign an individualized tracking number. If we think that we will be unable to make a determination on your request within twenty days, we will send an acknowledgment within ten days and we may ask you to clarify your request or arrange for a longer period for processing.

(c) *Granting requests.* If we decide to grant your request in full or in part, our response will include the records we are disclosing unless we have assessed fees under § 2004.9. If your request involves a voluminous amount of material or searches in multiple locations, we may provide interim responses, releasing the records on a rolling basis. If we assessed fees, we will disclose the records promptly upon payment. If you need assistance, you can contact our FOIA Public Liaison at *FOIA@ustr.eop.gov,* or OGIS at *OGIS@nara.gov.*

(d) *Adverse determinations of requests*—(1) *What is an adverse determination?* Adverse determinations, or denials of requests, include decisions that: the requested record is exempt in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(2) *Our response.* If we make an adverse determination denying your request in any respect, our response will include:

(i) The name and title or position of the person responsible for the determination;

(ii) A brief statement of the reasons for the denial, including any FOIA exemption(s) we applied;

(iii) An estimate of the volume of any records or information we withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(iv) Information about our FOIA Public Liaison and the mediation services provided by OGIS; and

(iv) Your right to appeal our decision under § 2004.8.

(3) *Markings on released documents.* If technically feasible, we will clearly mark records that we are disclosing in part to indicate the location and show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption.

§ 2004.8 What can I do if I am dissatisfied with USTR's response to my FOIA request?

(a) *How do I make an appeal?*—(1) *What can I appeal?* You can appeal any adverse determination in writing to our FOIA Appeals Committee within ninety calendar days after the date of our response. Examples of adverse determinations are provided in § 2004.7(d). You should specify the records that are the subject of your appeal and explain why the Committee should sustain the appeal.

(2) *Where do I send my appeal?* To avoid mail delivery delays caused by heighted security, we strongly suggest that you email any appeal to *FOIA@ustr.eop.gov.* Our mailing address is: FOIA Office, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. To make sure that the FOIA Office receives your appeal without delay, you should include the notation ''Freedom of Information Act Appeal'' and the individualized tracking number in the subject line of your email or on the front of your envelope and also at the beginning of your appeal.

(b) *Who will decide your appeal?* (1) The FOIA Appeals Committee or designee will act on all appeals under this section.

(2) We ordinarily will not adjudicate an appeal if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the FOIA Appeals Committee must take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* The FOIA Appeals Committee will notify you of its appeal decision in writing within twenty days from the date it receives the appeal. A decision that upholds the FOIA Office's determination in whole or in part will identify the reasons for the affirmance, including any FOIA exemptions applied, and notify you of your statutory right to seek judicial review. The notice also will inform you of the mediation services offered by OGIS as a non-exclusive alternative to litigation. If the FOIA Appeals Committee remands or modifies the original response, the FOIA Office will further process the request in accordance with the appeal determination and will respond directly to you.

(d) *When appeal is required.* Before seeking review by a court of an adverse determination, you generally first must submit a timely administrative appeal under this section.

§ 2004.9 Fees.

(a) *In general.* We will assess a fee to process your FOIA request in accordance with the provisions of this section and the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters: Commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. Different fees are assessed depending on the category. You can seek a fee waiver, which we will consider in accordance with the requirements in paragraph (h) of this section. We will contact you to

resolve any fee issues that arise under this section. We will conduct searches, review and duplication in the most efficient and least expensive manner. We ordinarily will collect all applicable fees before sending copies of records to you. You must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade or profit interest, which can include furthering those interests through litigation. Our decision to place you in the commercial use category will be made on a case-by-case basis based on your intended use of the information. We will notify you of your placement in this category.

(2) *Direct costs* are the expenses we incur in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to your FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. You must show that your FOIA request is made in connection with your role at the educational institution. We may seek verification that you are seeking the records to further scholarly research and not for a commercial use. To fall within this fee category, your request must serve the scholarly research goals of the institution rather than an individual research goal. We will advise you of your placement in this category.

Example 1. We would presume that a request from a professor of economics for records relating to the economic effects of a trade agreement, written on letterhead of the university's department of economics, is a request from an educational institution.

Example 2. We would not presume that a request from the same professor of economics seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing is a request from an educational institution, regardless of whether it was written on institutional stationery.

Example 3. We would presume that a request from a student in furtherance of their coursework or other school-sponsored activities evidenced by a course syllabus or other reasonable documentation indicating the research purpose for the request would qualify as part of this fee category.

(5) *Noncommercial scientific institution* is an institution that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and not on a commercial basis, as defined in paragraph (b)(1) of this section. To fall within this fee category, you must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records you seek are to further scientific research and not for a commercial use. We will advise you of your placement in this category.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. We will not consider a request for records supporting a news-dissemination function to be for a commercial use. We will consider freelance journalists who demonstrate a solid basis for expecting publication through a news media entity as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, we also may consider your past publication record in making this determination. We will advise you of your placement in this category.

(7) *Review* is the examination of a record located in response to a request in order to determine if any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including redacting the record and marking the appropriate exemptions. Review costs are properly charged even if we ultimately do not disclose a record. Review time also includes time spent both obtaining and considering any formal objection to disclosure a confidential commercial information submitter makes under § 2004.4, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts we expend to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, we will charge the following fees unless we granted a waiver or reduction of fees under paragraph (h) of this section, or the total fee to be charged is less than $25. If we do not meet the time limits for responding to your request, and if no unusual circumstance described in § 2004.6(c) applies, we will not assess fees.

(1) *Search.* (i) We will not assess any search fees for processing requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media. For all other requesters, we will charge for time spent searching even if we do not locate any responsive records or if we determine that the records are entirely exempt from disclosure. We will provide two hours of free search time except for requesters seeking records for a commercial use.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, we will charge $76/hour, which is a blended hourly rate for all personnel in the FOIA Office, plus 16 percent of that rate to cover benefits.

(iii) We will charge the direct costs if it is necessary to create a new computer program to locate the requested records. We will notify you of the costs associated with creating such a program, and you must agree to pay the associated costs before we build the program.

(iv) If your request requires the retrieval of records stored at a Federal records center, we will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

(2) *Duplication.* We will charge duplication fees to all requesters. We will honor your preference for receiving a record in a particular form or format if we can readily reproduce it in the

form or format requested. If we provide photocopies, we will make one copy per request at the cost of $.10 per page. For copies of records produced on tapes, disks or other media, we will charge the direct costs of producing the copy, including operator time. Where we must scan paper documents in order to comply with your preference to receive the records in an electronic format, we will charge you the direct costs associated with scanning those materials. For other forms of duplication, we will charge the direct costs. We will provide the first 100 pages of duplication (or the cost equivalent for other media) without charge except for requesters seeking records for a commercial use.

(3) *Review.* We will charge review fees to requesters who make commercial use requests. We will assess review fees in connection with the initial review of the record, *i.e.,* the review we conduct to determine if an exemption applies to a particular record or portion of a record. We will not charge for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed no longer to apply, any costs associated with re-review of the records in order to consider the use of other exemptions may be assessed as review fees. We will charge review fees at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Other charges*—(1) *Special services.* We will charge you the direct cost of providing any special services you request, such as sending records by express mail, certifying that records are true copies, or providing multiple copies of the same document.

(2) *Interest.* We may assess interest charges on any unpaid fees starting on the 31st day following the day on which we sent the bill to you at the rate prescribed in Interest and Penalty on Claims, 31 U.S.C. 3717.

(e) *Aggregating requests.* We may aggregate separate FOIA requests for the purpose of assessing fees when we reasonably believe that a requester or a group of requesters acting in concert, is dividing a request into a series of requests for the purpose of avoiding or minimizing fees. For example, we may aggregate multiple requests for similar information filed within a short period of time.

(f) *If we anticipate fees will exceed $25.* Unless you have indicated in advance a willingness to pay fees as high as anticipated, we will notify you if we estimate that charges will exceed $25 including a breakdown of the fees for search, review or duplication and whether applicable entitlements to duplication and search at no charge have been provided. We will advise you if we can readily estimate only a portion of the fee.

(1) We will not process your request until you either commit in writing to pay the actual or estimated total fee, or designate some amount of fees you are willing to pay. If you are a noncommercial use requester and we have not yet provided your statutory entitlements (*i.e.,* two hours of search time and 100 free pages), you can tell us to stop when we exhaust the statutory entitlements. We will start the twenty-day response clock when we receive your written reply.

(2) If you agree to pay some designated amount of fees, but we estimate that the total fee will exceed that amount, we will toll processing when we notify you of the estimated fees in excess of the amount you had indicated a willingness to pay. When we receive your written commitment to pay the actual or estimated total fee, or designate an additional amount of fees you are willing to pay, we will restart the processing clock.

(3) If you decide to reformulate your request to reduce costs, you can contact USTR's FOIA Public Liaison at *FOIA@ustr.eop.gov* for assistance.

(4) We will close your request if you do not respond in writing within thirty calendar days after the date we notify you of the fee estimate.

(g) *Advance payments.* (1) If we determine or estimate that the total fee will exceed $250, we may require you to make an advance payment up to the amount of the entire anticipated fee before we begin to process your request.

(2) If you previously failed to pay a properly charged FOIA fee to any Federal agency within thirty calendar days of the billing date, we may require proof that you paid the full amount due, plus any applicable interest on that prior request, and that you make an advance payment to us of the full amount of any anticipated fee before we begin to process a new request or continue to process a pending request or any pending appeal. If we have a reasonable basis to believe that you have misrepresented your identity in order to avoid paying outstanding fees, we may require you to provide proof of identity.

(3) If we require advance payment, we will not consider your request received and will not do any additional work until we receive the required payment. We will close your request if you do not pay the advance payment within thirty calendar days after the date of our fee determination.

(h) *Requirements for waiver or reduction of fees.* (1) You can seek a fee waiver or reduction by explaining in writing how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in your commercial interest. In determining whether to waive or reduce a fee we will consider whether disclosure of the requested information would:

(i) Shed light on the operations or activities of the government. The subject of the request must specifically concern identifiable operations or activities of the Federal government with a connection that is direct and clear, not remote or attenuated.

(ii) Likely contribute significantly to public understanding of those operations or activities. Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding. The disclosure must contribute to the understanding of a reasonably broad audience interested in the subject. We will consider your expertise in the subject area as well as your ability and intention to effectively convey information to the public.

(iii) Primarily advance your commercial interests. For example, we ordinarily presume that the public's interest is greater than the requester's commercial interest when we receive a request from a representative of the news media. We will not presume that disclosure to data brokers or others who merely compile and market government information for direct economic return primarily serves the public interest.

(2) We will grant a partial waiver when only some of the records to be released satisfy the requirements in this section.

(3) You should include your fee waiver or reduction request when you first submit your FOIA request to us. You can submit a fee waiver or reduction request at a later time so long as the underlying record request is pending or on administrative appeal. If you already committed to pay fees and subsequently request a waiver of those fees that we deny, you must pay any

costs incurred up to the date the fee waiver request was received.

Janice Kaye,

Chief Counsel for Administrative Law, Office of the U.S. Trade Representative.

[FR Doc. 2016–29985 Filed 12–14–16; 8:45 am]

BILLING CODE 3290–F7–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, SUPSHIP USN, Gulf Coast, Pascagoula, Mississippi

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is establishing a restricted area around the Huntington Ingalls Incorporated/Ingalls Shipbuilding and Dry Dock (HII) facility located in Pascagoula Mississippi, because of the sensitive nature of the on-going and potential future activities at that facility. The Supervisor of Shipbuilding, Conversion and Repair, Gulf Coast, located in Pascagoula, Mississippi is responsible for United States Navy shipbuilding activities at the HII facility, USA located in Pascagoula, Mississippi. The restricted area will be used for on-going construction when vessels are placed in the water. The restricted area is essential to protect persons and property from the dangers associated with the operation and safeguard the area from accidents, sabotage and other subversive acts.

DATES: *Effective date:* January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Mr. Philip Hegji, Corps of Engineers, Mobile District, Regulatory Division, at 251–690–3222 or by email at *philip.a.hegji@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps of Engineers is establishing a restricted area around the Huntington Ingalls Incorporated/Ingalls Shipbuilding and Dry Dock (HII) facility located in Pascagoula Mississippi, due to the sensitive nature of the on-going and potential future activities at that facility.

The proposed rule was published in the August 18, 2014 issue of the **Federal Register** (79 FR 48716; docket number COE–2014–0008). Comments were received from one commenter in response to the **Federal Register** document and the Corps of Engineers Mobile District's local public notice. The commenter objected to the size of the restricted area. The commenter was concerned that depending on the size/configuration of vessels in the navigational channel and river conditions some vessels might end up operating within the outer limits of the restricted area.

HII amended the restricted area to a smaller more easily avoided configuration.

Procedural Requirements

a. Review Under Executive Order 12866

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The restricted area is necessary for security of this shipbuilding and dry dock facility. Small entities can utilize navigable waters outside of the restricted area. After considering the economic impacts of this final restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined that this amendment to the regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period closed and all comments received from the public were considered. The environmental assessment may be viewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.781 to read as follows:

§ 334.781 Supervisor of Shipbuilding, Conversion and Repair Gulf Coast, Pascagoula, Mississippi; naval restricted area.

(a) *The area.* The datum for all coordinates is in NAD83 in accordance with 33 CFR 334.6. The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, contiguous to the area identified as the Huntington Ingalls Incorporated/Ingalls Shipbuilding and Dry Dock (HII) facility and the mean high water level within an area contained in an ''L'' shaped area bounded by the shore on the west and north ends of the area and bounded by buoys on the east and south sides of the area starting at: Latitude N. 30°21.13′ longitude W. 88°34.13′, thence to Latitude N. 30°21.08′ longitude W. 88°34.13′, thence to Latitude N. 30°21.03′ longitude W. 88°34.13′, thence to Latitude N. 30°20.98′ longitude W. 88°34.13′, thence to Latitude N. 30°20.93′ longitude W. 88°34.13′, thence to Latitude N. 30°20.88′, longitude W. 88°34.13′, thence to Latitude N. 30°20.83′ longitude W. 88°34.13′, thence

to Latitude N. 30°20.78′ longitude W. 88°34.13′, thence to Latitude N. 30°20.73′ longitude W. 88°34.13′, thence to Latitude N. 30°20.68′ longitude W. 88°34.13′, thence to Latitude N. 30°20.63′ longitude W. 88°34.13′, thence to Latitude N. 30°20.64′ longitude W. 88°34.10′, thence to Latitude N. 30°20.64′ longitude W. 88°34.25′, thence to Latitude N. 30°20.64′ longitude W. 88°34.33′, thence to Latitude N. 30°20.64′ longitude W. 88°34.41′, thence to Latitude N. 30°20.59′ longitude W. 88°34.47′, thence to Latitude N. 30°20.59′ longitude W. 88°34.51′, thence to Latitude N. 30°20.59′ longitude W. 88°34.57′, thence to Latitude N. 30°20.59′ longitude W. 88°34.63′, thence to Latitude N. 30°20.59′ longitude W. 88°34.70′, thence to Latitude N. 30°20.64′ longitude W. 88°34.75′, thence to Latitude N. 30°20.64′ longitude W. 88°34.82′, thence to Latitude N. 30°20.64′ longitude W. 88°34.87′, thence to Latitude N. 30°20.71′ longitude W. 88°34.87′. The datum for these coordinates is WGS84.

(b) *The regulations.* (1) All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area without permission from the Supervisor of Shipbuilding, Conversion and Repair, USN, Gulfcoast or his/her authorized representative.

(2) The restricted area is in effect twenty-four hours per day and seven days a week (24/7).

(3) Should warranted access into the restricted navigation area be needed, all entities are to contact the Supervisor of Shipbuilding, Conversion and Repair, USN, Gulf Coast, Pascagoula, Mississippi, or his/her authorized representative on Marine Communication Channel 16.

(c) *Enforcement.* The regulation in this section shall be enforced by the Supervisor of Shipbuilding, Conversion and Repair, USN, Gulf Coast and/or such agencies or persons as he/she may designate.

Dated: December 1, 2016.

Susan S. Whittington,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2016–30015 Filed 12–14–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AD28

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is amending regulations pertaining to the National Forest System Land Management Planning. This final rule amends the 2012 rule and is intended to clarify the Department's direction for plan amendments, including direction for amending land management plans developed under the 1982 rule.

DATES: This rule is effective January 17, 2017.

ADDRESSES: For more information, refer to the World Wide Web/Internet at: *http://www.fs.usda.gov/planningrule.* More information may be obtained on written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA Mail Stop 1104, 1400 Independence Avenue SW., Washington, DC 20250–1104.

FOR FURTHER INFORMATION CONTACT: Ecosystem Management Coordination staff's Assistant Director for Planning Andrea Bedell Loucks at 202–295–7968 or Planning Specialist Regis Terney at 202–205–1552.

SUPPLEMENTARY INFORMATION: The Forest Service proposed changing the existing land management planning rule to clarify the amendment process for land management plans. The proposed rule to amend the 2012 rule (hereafter referred to as the proposed rule) was published in the **Federal Register** on October 12, 2016, at 81 FR 70381.

Background

The National Forest Management Act (NFMA) requires the Forest Service to develop land management plans to guide management of the 154 national forests, 20 grasslands, and 1 prairie that comprise the 193 million acre National Forest System (NFS). 16 U.S.C. 1604.

The NFMA required the Secretary of Agriculture to develop a planning rule ''under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set[s] out the process for the development and revision of the land management plans, and the guidelines and standards'' (16 U.S.C. 1604(g)). Compliance with this requirement has had a long history, culminating in the current land management planning rule issued April 9, 2012 (77 FR 22160, codified at title 36, Code of Federal Regulations, part 219 (36 CFR part 219)) (hereinafter referred to as the 2012 rule).

In 1979, the U.S. Department of Agriculture (Department) issued the first regulations to comply with this statutory requirement. The 1979 regulations were superseded by the 1982 planning rule (hereinafter referred to as the 1982 rule).

Numerous efforts were made over the past three decades to improve on the 1982 rule. On November 9, 2000, the Department issued a new planning rule that superseded the 1982 rule (65 FR 67514). Shortly after the issuance of the 2000 rule, a review of the rule found that it would be unworkable and recommended that a new rule should be developed. The Department amended the 2000 rule so that the Forest Service could continue to use the 1982 rule provisions until a new rule was issued (67 FR 35431, May 20, 2002). Attempts to replace the 2000 rule, in 2005 and 2008, were set aside by the courts on procedural grounds, with the result that the 2000 rule remained in effect. In 2009, the Department reinstated the 2000 rule in the Code of Federal Regulations to eliminate any confusion over which rule was in effect (74 FR 67062, December 18, 2009; 36 CFR part 219, published at 36 CFR parts 200 to 299, revised as of July 1, 2010). In reinstating the 2000 rule in the CFR, the Department specifically provided for the continued use of the 1982 rule provisions, which the Forest Service used for all land management planning done under the 2000 rule. The 1982 rule procedures have therefore formed the basis of all existing Forest Service land management plans.

In 2012, after extensive public engagement, the Department issued a new planning rule to update the thirty-year old 1982 rule. The 2012 rule sets forth directions for developing, amending, revising, and monitoring land management plans (77 FR 21260, April 9, 2012). The 2012 rule is available online at *https://www.gpo.gov/fdsys/pkg/CFR-2013-title36-vol2/pdf/CFR-2013-title36-vol2-part219.pdf.*

On February 6, 2015, the Forest Service issued National Forest System Land Management Planning Directives for the 2012 Planning Rule (planning directives; see 80 FR 6683). The planning directives are the Forest Service Handbook (FSH) 1909.12 and Forest Service Manual (FSM) Chapter 1920, which together establish procedures and responsibilities for carrying out the 2012 rule. The planning

directives are available online at *http://www.fs.fed.us/im/directives/*.

After the issuance of the 2012 rule, the Secretary of Agriculture chartered a Federal Advisory Committee (Committee) to assist the Department and the Forest Service in implementing the new rule. The Committee has been rechartered twice. The Committee has consistently been made up of 21 diverse members who provide balanced and broad representation on behalf of the public; State, local, and tribal governments; the science community; environmental and conservation groups; dispersed and motorized recreation users; hunters and anglers; private landowners; mining, energy, grazing, timber, and other user groups; and other public interests. The Committee has convened regularly since 2012 to provide the Department and Forest Service with recommendations on implementation of the 2012 rule, including recommendations on the planning directives, assessments, and on lessons learned from the first forests to begin revisions and amendments under the 2012 rule. More information about the Committee's membership and work is available online at *http://www.fs.usda.gov/main/planningrule/committee.*

The 2012 Rule and Plan Amendments

There are 127 land management plans for the administrative units of the NFS, all developed using the 1982 rule procedures. Sixty-eight of the 127 land management plans are past due for revision: most were developed between 1983 and 1993 and should have been revised between 1998 and 2008, based on NFMA direction to revise plans at least once every 15 years (16 U.S.C. 1604(f)(5)). The repeated efforts to produce a new planning rule over the past decades contributed to the delay in plan revisions. An additional challenge was that instead of amending plans as conditions on the ground changed, responsible officials often waited to make changes all at once during a plan revision, resulting in a drawn-out, difficult, and costly revision process.

In promulgating the 2012 rule, the Department intended to create a more efficient and effective planning process. The planning framework set forth in the 2012 rule includes three phases: Assessment; plan development, amendment, or revision; and monitoring. The 2012 rule supports an integrated approach to the management of resources and uses, incorporates a landscape-scale context for management, and is intended to help the Forest Service adapt to changing conditions and improve management based on new information and monitoring.

The concept of adaptive management is an integral part of the 2012 rule. Recognizing that adaptive management requires a more responsive and iterative approach to modifying land management plans to reflect new information, the Department's intent when developing the 2012 rule was for the planning framework to encourage and support the more regular use of amendments to update plans between revisions. More frequent amendments should also make the revision process less cumbersome because plans will not become as out-of-date between revisions.

Plans may be amended at any time. The 2012 rule provides that a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas).

The 2012 rule included a 3-year transition period during which responsible officials could use either the 2012 rule or the 1982 rule procedures to amend plans approved or revised under the 1982 rule procedures (36 CFR 219.17(b)(2)). The 3-year transition period expired on May 9, 2015, and all plan amendments now must be approved under the requirements of the 2012 rule.

In 2014, the Forest Service began to use the 2012 rule to amend a number of existing land management plans, all of which were developed using the 1982 rule procedures (2012 rule amendments to 1982 rule plans). Currently amendments to 43 Forest Service land management plans are pending. As the Forest Service gained some experience with the process for making 2012 rule amendments to 1982 rule plans and discussed with the Committee early lessons learned, the Committee recommended additional clarity on how to apply the 2012 rule's substantive requirements (requirements related to sustainability, plant and animal diversity, multiple uses and timber set forth within 36 CFR 219.8 through 219.11) when amending 1982 rule plans.

While the 2012 rule includes direction specific to amendments, and while there is evidence of the Department and Forest Service's intent in rule wording, preamble text, and planning directives, the 2012 rule did not explicitly direct how to apply the substantive requirements set forth in the 2012 rule when amending 1982 rule plans. Using the 2012 rule to amend 1982 rule plans can be a challenge because there are fundamental structural and content differences between the two rules. Because of the underlying differences, 1982 rule plans likely will not meet all of the substantive requirements of the 2012 rule. It is therefore important for the Department to clarify how responsible officials should apply the substantive requirements of the 2012 rule when amending 1982 rule plans in a way that reflects Departmental expectations.

While plans developed or revised under the 2012 rule will be expected to meet all of the 2012 rule's substantive requirements at the time those plans are approved, clarity in how to apply the 2012 rule to amend those plans in the future will also be important.

This final rule amending the 2012 rule (hereinafter referred to as the final rule) is intended to clarify the Department's direction for plan amendments, including direction for amending 1982 rule plans. These clarifications reflect NFMA requirements; the Department's intent and the plain wording of the 2012 rule, the preambles for the proposed and final 2012 rule, and the planning directives implementing the 2012 rule; feedback from the Committee; public comments; and Forest Service planning expertise.

Applying the 2012 Rule To Amend Plans

Plans are changed in two distinctly different ways. The NFMA requires revisions ''when conditions in a unit have significantly changed,'' and ''at least every 15 years'' (16 U.S.C. 1604(f)(5)). As the 2012 rule states, ''[a] plan revision creates a new plan for the entire plan area, whether the plan revision differs from the prior plan to a small or large extent'' (36 CFR 219.7(a)). The process for a plan revision requires, among other things, preparation of an environmental impact statement (36 CFR 219.7(c)).

The NFMA also provides that ''plans can be amended in any manner whatsoever'' (16 U.S.C. 1604(f)(4)). As the Department explained in the preamble to the 2012 rule, ''[p]lan amendments *incrementally* change the plan as need arises.'' (77 FR 21161, 21237, April 9, 2012) (emphasis added). Unlike a plan revision, a plan amendment does not create a new plan; it results in an amended plan, with the underlying plan retained except where changed by the amendment. The Department explained its intent that with the 2012 rule, ''plans will be kept more current, effective and relevant by the use of more frequent and efficient amendments, and administrative changes over the life of the plan, also

reducing the amount of work needed for a full revision'' (Id.).

The 2012 rule provides that, ''[t]he responsible official has the discretion to determine whether and how to amend the plan.'' (36 CFR 219.13(a)). The 2012 rule reinforces this discretion by providing that the rule ''does not compel a change to any existing plan, except as required in § 219.12(c)(1)'' (which establishes monitoring requirements). (36 CFR 219.17(c)).

Under the 2012 rule, ''[p]lan amendments may be broad or narrow, depending on the need for change'' (36 CFR 219.13(a)); and amendments ''could range from project specific amendments or amendments of one plan component, to the amendment of multiple plan components.'' (77 FR 21161, 21237, April 9, 2012). Unlike for a plan revision, the 2012 rule does not require an environmental impact statement for every amendment; such a requirement would be burdensome and unnecessary for amendments without significant environmental effect, and ''would also inhibit the more frequent use of amendments as a tool for adaptive management to keep plans relevant, current and effective between plan revisions.'' (Preamble to final rule, 77 FR 21161, 21239, April 9, 2012). Instead, the 2012 rule provides that ''[t]he appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects.'' (36 CFR 219.13(b)(3)).

The 2012 rule gives responsible officials the discretion, within the framework of the 2012 rule's requirements, to tailor the scope and scale of an amendment to reflect the need to change the plan. No individual amendment is required to do the work of a revision. While the 2012 rule sets forth a series of substantive requirements for land management plans within §§ 219.8 through 219.11, not every section or requirement within those sections will be directly related to the scope and scale of a given amendment. Although the Department recognizes that resources and uses are connected, the Department does not expect an individual plan amendment to do the work of a revision to bring an underlying plan into compliance with all of the substantive requirements identified in §§ 219.8 through 219.11. The determination of which sections or requirements within those sections apply to an amendment will depend on the purpose and effects of the changes being proposed.

However, a plan amendment must be done ''under the requirements of'' the 2012 rule (36 CFR 219.17(b)(2)). Therefore the responsible official's discretion is not unbounded. An amendment cannot be tailored so that the amendment fails to meet directly related substantive requirements of the rule. Rather, the responsible official must determine which substantive requirements within §§ 219.8 through 219.11 of the 2012 rule are directly related to the plan direction being added, modified or removed by the amendment, and apply those requirements to the amendment.

As explained above, unlike a plan revision, a plan amendment does not create a new plan; it results in an amended plan, with the underlying plan retained except where changed by the amendment. Therefore, the amended plan will have plan direction changed by the amendment and plan direction that has not been changed. When amending a plan under the 2012 rule, a responsible official may choose not to change portions of the plan, even if those portions are inconsistent with a substantive requirement within §§ 219.8 through 219.11, when such portions are not directly related to the purpose or effects of the amendment. A unit may have important needs for change beyond those that form the basis of any individual amendment. However, the responsible official's ability to target the scope and scale of an amendment is important for adaptive management, and will be especially critical for responsible officials amending 1982 plans.

For example, the 2012 planning rule requires that the plan must include plan components to provide for scenic character, which is a term of art associated with the scenic management system that was developed in the mid-1990s. If the scope of an amendment to a 1982 plan includes changes to plan direction for the purpose of, or that would have an effect on, scenery management, then the responsible official must apply the 2012 rule requirement about scenic character to the changes being proposed. However, a responsible official is not otherwise required to review and modify a 1982 rule plan to meet the 2012 rule's requirement to provide for scenic character. This is true even if there is also a separate, additional need to change the plan to protect scenery. The responsible official would have to address the scenic character requirement throughout the plan area in a plan revision, but in an amendment, the responsible official has the discretion to more narrowly focus on a specific need for change.

The Department's intent that not every requirement within §§ 219.8 through 219.11 will apply to every amendment of 1982 rule plans is reflected in the following planning directives provision at FSH 1909.12, chapter 20, section 21.3:

> Amendment of a plan developed and approved using the 1982 Rule process requires application of the 2012 rule requirements only to those changes to the plan made by the amendment. For example, the 2012 Rule's requirements to establish a riparian management zone (36 CFR 219.8(a)(3)) would apply only if the plan amendment focuses on riparian area guidance.

See also the Handbook's direction regarding documentation of a decision to approve an amendment of a 1982 rule plan: ''[f]or plan amendments, the decision document must discuss *only those requirements of 36 CFR 219.8 through 219.11 that are applicable* to the plan components that are being modified or added.'' (FSH 1909.12 ch. 20, sec. 21.3 (emphasis added)).

Similar recognition is included in the 2012 rule's requirements for project consistency for 1982 rule plans, at 36 CFR 219.17(c).

The distinction made in this provision between consistency within an amended plan with direction developed and approved pursuant to the 2012 rule and direction developed or revised under a prior rule reflects that portions of a 1982 rule plan may be changed by an amendment and other portions may remain unchanged until revision.

During the Department and Forest Service's conversations with the Committee about the Forest Service's early efforts to use the 2012 rule to amend 1982 rule plans, the Committee advised that some members of the public expressed confusion about how to apply the substantive requirements within §§ 219.8 through 219.11 when amending 1982 rule plans.

For example, some members of the public suggested that because resources and uses are connected and changes to any one resource or use will impact other resources and uses, the 2012 rule therefore requires that all of the substantive provisions in §§ 219.8 through 218.11 be applied to every amendment. Other members of the public suggested an opposite view: That the 2012 rule gives the responsible official discretion to selectively pick and choose which, if any, provisions of the rule to apply, thereby allowing the responsible official to avoid 2012 rule requirements or even propose

amendments that would contradict the 2012 rule. Under this second interpretation, some members of the public hypothesized that a responsible official could amend a 1982 rule plan to remove plan direction that was required by the 1982 rule without applying relevant requirements in the 2012 rule.

This final rule clarifies that neither of these interpretations is correct.

The Department recognizes that resources and uses are connected and interrelated. However, an interpretation that the 2012 rule prevents a responsible official from distinguishing among connected resources and requires the application of all of the 2012 rule's substantive requirements to every amendment would essentially turn every amendment into a revision. Such an interpretation would curtail the Forest Service's ability to use amendments incrementally to change a plan, and directly contradicts the Department's intent as expressed in the 2012 rule and supporting material that revisions and amendments serve different functions and that amendments be used to keep plans relevant, current and effective between plan revisions. The 2012 rule gives the responsible official the discretion to determine whether and how to amend a plan, including determining the scope and scale of an amendment based on a specific need to change the plan.

At the same time, the responsible official's discretion to tailor the scope and scale of an amendment is not unbounded; the 2012 rule does not give a responsible official the discretion to amend a plan in a manner contrary to the 2012 rule by selectively applying, or avoiding altogether, substantive requirements within §§ 219.8 through 219.11 that are directly related to the changes being proposed. Nor does the 2012 rule give responsible officials discretion to propose amendments ''under the requirements'' of the 2012 rule that actually are contrary to those requirements, or to use the amendment process to avoid both 1982 and 2012 rule requirements (§ 219.17(b)(2)).

This amendment to the 2012 rule clarifies that the responsible official is not required to apply every requirement of every substantive section (§§ 219.8 through 219.11) to every amendment. However, the responsible official is required to apply those substantive requirements that are directly related to the plan direction being added, modified, or removed by the amendment. The responsible official must determine which substantive requirements are directly related to the changes being proposed based on the purpose and effects of the amendment, using the best available scientific information, scoping, effects analysis, monitoring data, and other rationale to inform the determination. The responsible official must provide early notice to the public of which substantive requirements are likely to be directly related to the amendment, and must clearly document the rationale for the determination of which substantive requirements apply and how they were applied as part of the decision document.

This final rule ensures that the Forest Service can use the 2012 rule to amend 1982 rule plans without any individual amendment bearing the burden of bringing the underlying plan into compliance with all of the 2012 rule's substantive requirements, even if unchanged direction in the 1982 rule plan fails to address, meet or is contrary to 2012 rule requirements. Twenty-two forests are currently using the 2012 rule to revise their 1982 rule plans, but given Forest Service budget constraints and staff capacity, revision of all 127 of the Forest Service's 1982 rule plans will likely take more than 15 years. Because the 2012 rule allowed the continued use of the 1982 rule procedures to complete revisions that were underway at the time the 2012 rule was published (36 CFR 219.17(b)(3)), the most contemporary land management plan published using the 1982 rule procedures was approved in 2016, with a few more to come. The clarifications in this final rule will help ensure that the Forest Service can effectively use the 2012 rule to amend 1982 rule plans until they are revised.

Future amendments to plans developed or revised under the 2012 rule will likely be less complicated than using the 2012 rule to amend 1982 rule plans, because plans developed or revised under the 2012 rule are expected to meet all of the 2012 rule's substantive requirements at the time of approval. However, this final rule clarifies that responsible officials have the discretion to tailor the scope and scale of amendments to adaptively change plans whether an amendment is to a 1982 rule plan or, in the future, to a 2012 rule plan. The final rule also supports transparency and public participation by clarifying notification and documentation requirements for applying the 2012 rule's substantive requirements to amendments.

Clarifications

This amendment to the 2012 rule clarifies that:

- The responsible official has the discretion to determine whether and how to amend a plan, and the scope and scale of a plan amendment, based on a need to change the plan.
- The responsible official must use the best available scientific information to inform the amendment process.
- The responsible official must determine which substantive requirements within §§ 219.8 through 219.11 are directly related to plan direction being added, modified or removed by the amendment and apply those requirements to the amendment in a way that is commensurate with the scope and scale of the amendment.
- The responsible official is not required to apply any substantive requirement within §§ 219.8 through 219.11 that is not directly related to the amendment.
- The determination of which requirements are directly related to an amendment must be based on the purpose and effects (beneficial or adverse) of the changes being proposed, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.
- The responsible official must include information in the initial notice for the amendment about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment.
- The decision document for an amendment must include a rationale for the responsible official's determination of the scope and scale of the amendment, which requirements within §§ 219.8 through 219.11 are directly related, and how they were applied.
- If species of conservation concern (SCC) have not yet been identified for a plan area and scoping or NEPA analysis for a proposed amendment reveals substantial adverse impacts to a specific species, or the proposal would substantially lessen protections for a specific species, the responsible official must determine whether that species is a potential SCC. If so, the responsible official must apply the requirements of 2012 rule with respect to that species as if it were an SCC.
- An amendment that applies only to one project or activity is not considered a significant change in the plan for the purposes of the NFMA, but is still subject to NEPA requirements.
- The Department corrected a mistake made on July 27, 2012 when the Forest Service inadvertently removed a sentence about the maximum size limits for areas to be cut in one harvest operation in § 219.11(d)(4).

Response to Comments

The following is a description of specific comments received on the

proposed rule, responses to comments, and changes made in response to comments. Each comment received consideration in the development of the final rule.

General Comments

The Department received the following comments not specifically tied to a particular section of the October 12, 2016 proposed rule.

General Comments on Rulemaking Effort

Comment: Several respondents argue for changes to the 2012 rule other than the changes in the proposed rule. For example, one respondent requested that the term ''aquifer'' be included after the term ''watershed'' in each instance that the term ''watershed'' is used in the existing rule. That same respondent recommends that groundwater monitoring be added to the monitoring program requirements of § 219.12. A respondent requested we focus more on the forestry side to manage timber better. A respondent recommended the planning rule make it clear that ''other content'' of § 219.13(c)) does not include 1982 rule monitoring plans, so that changing these monitoring plans would require a plan amendment. The respondent also recommended that the rule clarify project consistency requirements regarding amended plans that include direction based on both the 1982 rule and 2012 rule because the two rules interpret the consistency requirement differently. Yet another respondent recommended that the planning rule require buffers to overly restrictive management policies where the communities and other private landowners within the boundaries of the forest require access or forest resources should be considered for economic development of those adjacent lands and community support.

Response: These suggestions focus on parts of the 2012 rule for which changes were not proposed. Because these are outside the scope of the proposal, this final rule is not the appropriate means to make such changes. Pursuant to Executive Order 13563—Improving Regulation and Regulatory Review, the Department will consider these comments under retrospective review of the planning rule in the future.

Comment: Planning directives. A respondent requested the Forest Service issue planning directives about environmental analysis and NFMA diversity requirements to support the rule simultaneously with the rule.

Response: The Department decided to not issue directives simultaneously with the rule because the need to obtain public comment on those directives before we issued them would unnecessarily delay the final rule and could delay pending amendments to existing plans. The Department also believes that, while great effort has been made to foresee how the clarifications in this final rule will operate, it may be more helpful to issue directives if necessary after gaining practical experience through implementation, and learning the extent to which additional clarification is needed.

Comment: Consultation with affected Alaska Native Corporations and tribes. An Alaska Native Corporation (ANC) wrote that it appreciated the opportunity to comment on the Planning Rule Amendment. They also said the Forest Service should consult with the ANC and engage in meaningful dialog about these issues much earlier in the process.

Response: The Forest Service contacted the respondent to clarify the intent and scope of their comment. The spokesman for the respondent stated the ANC does not want consultation prior to publication of this final rule, but was simply pointing out some inefficiencies in the process. He said the respondent will be satisfied to see the response to comments.

The Forest Service is fully committed to meeting its responsibilities for consultation, and appreciates the outreach from the respondent. The Forest Service had determined at the time of the proposal that consultation was not required for this amendment because there was extensive consultation associated with developing the 2012 rule, the proposed changes were simply clarifications of process for that rule, and there are no direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. However, the Forest Service Regional Office in Juneau did send a notice of the Proposed Planning Rule Amendment comment period to Alaska Native Corporations and tribes. The notice said that the Forest Service would meet with any Alaska Native Corporation or Tribe expressing an interest in discussing the proposed changes and how the amendment to the 2012 rule might benefit our collective work in forest management and restoration. The Forest Service will continue to be available to meet with any Alaska Native Corporation or Tribe when implementing the 2012 rule and these clarifications for amending plans under the 2012 rule.

Comment: Several respondents were supportive of the proposed rulemaking. Several respondents agreed with the Forest Service that the 2012 rule intended for amendments to be routine, timely, less cumbersome and flexible, allowing for adaptive management. Several respondents said that they support the Department acting to clarify the expectations for plan amendments, including expectations for amending 1982 rule plans.

Response: Thank you for taking the time to comment.

Comment: Plan amendments should identify and give consideration of rural communities. A respondent said that consideration of the community's cultural, social and economic needs, especially in areas struggling economically, should be recognized as the key component in any Plan revision. Another respondent indicated the burden the plan amendment process places on industry supporting small communities particularly local sawmill and ranching industries. These industries were stated to be important to local economies and reliant on National Forests.

Response: The 2012 rule already has many requirements for the consideration of local communities' cultural, social, and economic needs, including during the amendment process. Section 219.4 requires the responsible official to engage local communities, as well as to coordinate with other public planning efforts, including State and local governments, and Tribes. Section 219.4(a)(3) requires that the responsible official request ''information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites'' during consultation and opportunities for Tribal participation. Section 219.6(b) requires in the assessment that responsible officials identify and evaluate existing relevant information about social, cultural, and economic conditions. Section 219.8(b) requires that plans provide plan components to contribute to economic and social sustainability taking into account social, cultural, and economic conditions relevant to the area influenced by the plan. Section 219.10(b)(1)(ii) requires plan components for a new plan or plan revision to provide for ''protection of cultural and historic resources,'' and ''management of areas of tribal importance.'' Section 219.12 requires monitoring progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities.

In addition, the Forest Service Land Management Planning Handbook

requires the plan monitoring program to contain one or more questions and associated indicators addressing the plan's contributions to communities, social and economic sustainability of communities, multiple use management in the plan area, or progress toward meeting the desired conditions and objectives related to social and economic sustainability (FSH 1909.12, ch. 30, sec. 32.13f).

Comment: Adaptive management. Respondents commented that adaptive management is an essential part of the 2012 rule and as such, additional clarifications should be included to facilitate, rather than discourage, adaptive management. Several respondents expressed concern that the existing and the proposed rule would impose burdens that would discourage the responsible official from undertaking plan amendments because of a lack of clarity. They said it was not clear how the Forest Service would determine which substantive provisions of the 2012 rule require changes to the plan. The respondent indicated that this ambiguity may result in less adaptive management. One respondent said the burden associated with staff and financial capability may make some forests less likely to pursue amendments and adaptive management.

Response: The Department agrees that adaptive management and preserving the responsible official's flexibility in amending plans are essential to the 2012 rule. The Department made changes between the proposed and final rule to reduce ambiguity and provide clarity. The final rule explains that responsible officials must determine which specific substantive requirement(s) within §§ 219.8 through 219.11 are directly related to a plan amendment and then apply those requirements to the amendment. The Department removed the paragraph that would have required the responsible official to ''[e]nsure that the amendment avoids effects that would be contrary'' to the rule requirements, which some respondents found confusing. The rule is now clearer. For further details on the changes made to support adaptive management and preserve the responsible official's ability to amend plans under the 2012 rule, see ''Amend § 219.13 to add paragraph (b)(5)'' below.

Comment: Proposed changes should not apply to plans revised under the 2012 rule. A respondent stated that a 2012 rule plan is expected to meet all of rule requirements and any amendment to such plan should be evaluated on the basis of how the entire amended plan meets the provision.

Response: The Department believes that when amending any plan the responsible official should not be required to undertake an extensive review of an entire plan and prove that it continues to meet all of the requirements within §§ 219.8 through 219.11. For an amendment of a 2012 rule plan, the responsible official must apply the substantive requirement(s) within §§ 219.8 through 219.11 that are directly related to the amendment. The clear intent of the 2012 rule is that amendments be used to incrementally change plans. The incremental nature of amendments applies whether the amendment is to a 2012 or a 1982 rule plan, and the clarifications in this final rule must preserve that flexibility and 2012 rule intent.

Comment: Limiting the applicability of 2012 rule requirements when changing land allocations. One respondent is concerned about the burden the proposed rule imposes on small changes to area allocations. The respondent said that, any change in a land allocation reduces the application of one aspect of the planning rule to favor another (*e.g.,* a change can favor ecological integrity over economic sustainability). The respondents further states that the rule allows the responsible official to find a balance in the overall plan, but it remains unclear how a change in land allocation for a small area can meet these multiple and perhaps contradictory provisions for just the change being considered.

Response: The 2012 rule did not require that every resource or use be present in every area. The Department clarifies in this final rule that directly related specific substantive requirements within §§ 219.8 through 219.11 apply within the scope and scale of the amendment. Changes in land allocation for a small area would likely require a similarly narrow application of the directly related substantive requirements, depending on the purpose and effects of the changes. It is unlikely that a change in land allocation for a small area would have substantial adverse effects.

Comment: An alternate approach. A respondent suggested an alternate approach to the proposed rule that would not require the determination of which rule requirements directly relate to a proposed plan amendment. The respondent suggested instead setting clear sideboards for each type of plan amendment based upon the substantive provisions of the 2012 rule. As an example the respondent suggested not allowing plan amendment if the consequences would lead to a sensitive species or an SCC (if identified) no longer having the ecological conditions necessary to provide for a viable population in the plan area. The respondent further suggests that similar specific sideboards can be identified for other requirements including, air, soil and water, riparian areas key ecosystem characteristics, rare communities, tree diversity, and other items including: sustainable recreation, cultural and historic resources, areas of tribal importance, wilderness, research, wild and scenic rivers.

Response: The Department believes that a rule identifying sideboards for each type of plan amendment and associated substantive provisions of the 2012 rule would be overly complex and may not be able to anticipate or account for variation across the 127 plan areas of the National Forest System. The Department believes the better approach is for responsible officials to apply specific substantive requirements within the 2012 rule to an amendment when directly related to the changes being proposed by that amendment.

Comment: Environmental Impacts. One respondent commented on the Environmental Impacts discussion in the Regulatory Certification section. The respondent agreed with the Forest Service that the proposed rule's impacts were within the range of environmental analysis in the January, 2012 environmental impact statement prepared for the planning rule. The respondent added, however, that it disagreed with the Forest Service's additional assertion that the proposed rule amendment falls within a Forest Service categorical exclusion of actions from documentation in an environmental assessment or an environmental impact statement (''rule, regulations, or policies to establish service wide administrative procedures, program processes, or instruction.'' 36 CFR 220.6 (d)(2)). The respondent contends that the position that categorically excluding planning regulations has been rejected by the courts, and therefore the Department and Forest Service should not apply that category. The respondent cites to *Citizens for Better Forestry* v. *U.S. Department of Agriculture,* 341 F. 3d 961 (9th Cir. 2003) and *Citizens for Better Forestry* v. *U.S. Department of Agriculture,* 481 F. Supp.2d 1059 (N.D. Cal. 2007).

Response: Like the respondent, the Department has determined that the scope and scale of the final rule are such that the rule's effects are within the range of effects of the environmental impact statement prepared for the 2012 rule. As the respondent noted, with respect to the 2012 rule, which entirely

replaced a prior planning rule, the Forest Service did not rely on the categorical exclusion for rules but prepared an environmental impact statement for that rule. Planning rules that entirely replaced prior rules were also the subject of the court decisions the respondent refers to. However, the Department holds the position that for certain changes to a planning rule, the categorical exclusion may properly apply.

Section-by-Section Explanation of the Final Rule

The following section-by-section descriptions are provided to explain the approach taken in the final rule.

Subpart A—National Forest System Land Management Planning

Revise § 219.3—Role of Science in Planning

The final rule is unchanged from the proposed rule for this section. The Department added the words ''for assessment; developing, amending, or revising a plan; and monitoring,'' to the first sentence of § 219.3. This change was made to clarify that the best available scientific information is to be used to inform the plan amendment process, as well as all other parts of the planning framework (36 CFR 219.5). Specifically mentioning each part of the planning framework makes the wording of this section more consistent with other sections of the rule.

Revise § 219.3—Response to Comments

Comment: Support the clarification. Several respondents expressed support for the amendment to § 219.3 to clarify that the requirement to use the best available scientific information applies equally to plan amendments.

Response: Thank you for taking the time to comment.

Amend §§ 219.8 Through 219.11 To Revise the Introductory Text

The final rule is unchanged from the proposed rule for these sections. The Department added the words ''a plan developed or revised under this part'' to the introductory text of §§ 219.8 through 219.11 to clarify that the combined set of requirements in each section apply only to entire plans developed or revised under the current planning rule. It was not the Department's intent to imply that an individual plan amendment must meet all of the requirements of §§ 219.8 through 219.11. This clarification distinguishes between new plans and plan revisions, which must comply with all of the requirements in §§ 219.8 through 219.11, and amendments, which do not.

Amend §§ 219.8 Through 219.11—Response to Comments

Comment: Support the principle that amendments do not require the application of all of the requirements within §§ 219.8 through 219.11. While no comments directly addressed the changes to §§ 219.8 through 219.11, respondents supported the principle that amendments are different from revisions, and that the 2012 rule should not be interpreted to imply that an amendment must incorporate every substantive requirement within §§ 219.8 through 219.11. Many respondents noted that such an interpretation would trigger premature plan revision and would inappropriately curtail the Forest Service's use of the amendment process to make targeted and efficient changes to plans in response to pressing needs. These respondents strongly supported the Department's stated intent for this amendment to the 2012 rule to preserve the Forest Service's flexibility in using amendments to support adaptive management by clarifying that amendments do not require the application of all of the substantive requirements within these sections.

Response: The Department agreed and retained the changes to §§ 219.8 through 219.11, which clarify that plans *developed* or *revised* under the 2012 rule must meet the combined set of requirements among and within §§ 219.8 through 219.11. However, *amendments* are not required to meet all of the substantive requirements within these sections. Direction for amendments is clarified at § 219.13.

Amend § 219.13 To Revise Paragraph (a)

The final rule is unchanged from the proposed rule for this section. The Department added the words ''and to determine the scope and scale of any amendment'' to the end of the third sentence of paragraph (a). This change clarifies that responsible official's discretion to determine whether and how to amend any plan includes the discretion to determine the scope and scale of any amendment. The Department received no comments on this revision.

Amend § 219.13 To Revise the Introductory Text of Paragraph (b)

The Department added the words ''For every plan amendment,'' to the introductory text of paragraph (b), so it is clear that the procedural and other requirements outlined in § 219.13(b) apply to all amendments. The proposed rule used similar wording ''For all plan amendments,'' but the Department changed ''all'' to ''every'' in the final rule for grammar's sake to conform the wording to the singular use of the word ''amendment'' in the paragraphs that followed. The Department also changed the caption of this paragraph from ''Amendment process'' to ''Amendment requirements'' to reflect the clarified text in paragraph (b)(5) and in §§ 219.8 through 219.11. The Department received no comments on this revision.

Amend § 219.13 To Revise Paragraph (b)(1)

In the final rule, the Department changed the punctuation at the end of paragraph (b)(1) to a period, from a semicolon, to reflect similar punctuation at the end of the other paragraphs under paragraph (b). The Department made no other changes to paragraph (b)(1).

Amend § 219.13 To Revise Paragraph (b)(2)

To respond to comments about the proposed rule, the Department added a requirement to include information in the initial notice for the amendment about which substantive requirements of are likely to be directly related to the amendment.

Amend § 219.13(b)(2)—Response to Comments

Comment: Inform the public early in the process. A group of respondents stated that the responsible official should inform the public early in the amendment process—likely as part of the preliminary identification of the need to change the plan—about which substantive provisions within §§ 219.8 through 219.11 may be implicated by an amendment, and should allow the public to provide input through the scoping process. The comment noted that early notification would be consistent with the 2012 rule's focus on transparency and public participation.

Response: The Department agreed and added the requirement to paragraph (b)(2) of § 219.13.

Amend § 219.13 To Revise Paragraph (b)(3)

The final sentence of paragraph (b)(3) was modified to state that project specific amendments are not considered a significant change in the plan for the purposes of the NFMA. In addition a conforming change was also made to § 219.16(a)(2).

The Department made these changes so that an amendment that applies only to one project or activity is not considered a significant change in the plan for the purposes of the NFMA, in response to comments about the proposed rule. This change also clarifies

that an amendment that is considered a ''significant change in the plan for the purposes of the NFMA'' does not trigger a revision-type process; it is subject to the same procedures and requirements otherwise included in § 219.13, as well as the 90-day comment period required by § 219.16(a)(2).

An amendment that applies only to one project or activity may still have significant environmental effects and require the preparation of an environmental impact statement. The Department added clarification in § 219.16(a)(2) to address minimum NEPA requirements for an amendment that applies only to one project or activity for which a draft EIS is prepared.

Amend § 219.13(b)(3)—Response to Comments

Comments: According to the proposed rule a site-specific project amendment would be ''significant,'' and trigger the process requirements for a plan revision. Several respondents expressed concern about preserving the Forest Service's ability to use amendments that would apply only to one project or activity. One respondent stated that paragraph (b)(3), which provides that an amendment prepared with an EIS would be a significant amendment, would make even a project-specific amendment significant. The respondent further stated that significant amendments under NFMA trigger the requirements for a revision. The respondent requests that the Forest Service rewrite and clarify § 219.13(b)(3) so that an EIS for a project containing a plan amendment does not trigger, in effect, a forest plan revision.

Response: The final rule includes an exception that when an amendment applies only to one project or activity the amendment is not considered a significant change to the plan for the purposes of NFMA (such a project and associated amendment may have significant effects and require the preparation of a draft EIS under NEPA). Corresponding changes were made to § 219.16(a)(2).

However, the Department disagrees with the respondent's assertion that if an amendment is significant for the purposes of the NFMA, a revision is automatically triggered. The 2012 rule supports and this final rule preserves the responsible official's discretion to determine the scope and scale of amendments, including amendments that may be broad or have a significant effect. The process and content requirements included in § 219.13 satisfy the NFMA requirements for a significant amendment.

A brief clarification here may be helpful. The 1982 rule had required the Forest Service to undertake the plan revision process (except for wilderness analysis) when ''a proposed amendment would result in a significant change in such plan.'' (36 CFR 219.10(f) (2000), (16 U.S.C. 1604(f)(4)). The Forest Service soon learned that the requirement of the 1982 rule to follow the same steps for a significant amendment as for a revision was excessively burdensome. In its 1991 Advanced Notice for proposed rulemaking to revise its land and resource planning regulations, the Forest Service's preliminary proposal would have limited the evaluation process for what it called a ''major amendment'' to ''only . . . the changes being proposed and not the entire forest program.'' (56 FR 6508, 6523, February 15, 1991)). Since that time, the Forest Service land management planning rules issued by the Department have distinguished the requirements for significant amendments and plan revisions.

The 2012 rule retained that distinction and did not carry forward the 1982 rule's requirement that the Forest Service undertake the plan revision process when a proposed amendment would result in a significant change to the plan. The NFMA does not require the Forest Service to carry out the entire process for revision for every significant amendment. Rather, as the 2012 rule provided and the clarifications in this amendment to the 2012 rule reinforce, the responsible official has the discretion to determine the scope and scale of an amendment, and the associated processes and requirements are tailored to the changes being proposed. In some cases, the nature of the proposed changes to the plan may require an analysis of the entire plan direction, so that the Forest Service must ''[re]determine forest management systems, harvesting levels, and procedures'' in light of the multiple uses for which the forest is administered; and reconsider and if appropriate, adjust the ''planned timber sale program'' and the proportion of probable methods of timber harvest.'' 16 U.S.C. 1604 (e) and (f). However, other amendments, including amendments that require the preparation of an environmental impact statement, may not affect these matters, and would require less analysis. The direction in paragraph (b)(5) of this final rule would require the appropriate application of the 2012 rule's requirements in a way that satisfies the related NFMA requirements.

The reason the Department included the final sentence of paragraph (b)(3) in the 2012 rule was to avoid applying two different standards for determining significance between the requirements of NFMA and NEPA. In the end, all plans must ''provide for multiple use and sustained yield of products and services'' and all the other specific information required by the NFMA. (16 U.S.C. 1604 (e) and (f)). The 2012 rule requires in § 219.1(f) that plans meet all applicable laws and regulations; nothing in this amendment changes that requirement.

The Department's position is that the NFMA's requirements for significant amendments are satisfied by the requirements to prepare an environmental impact statement and to provide at least a 90 day comment period on the proposal and draft EIS, in addition to the other requirements for amendments included in § 219.13. The final rule retains these requirements.

Amend § 219.13 To Add Paragraph (b)(4)

The Department retained the proposed paragraph (b)(4) but slightly modified the wording for clarity. The Department removed the phrase ''without altering the existing direction'' and added the word ''simply.''

The Department added paragraph (b)(4) as a clarification that each plan component added or changed by a plan amendment must conform to the applicable definition for desired conditions, objectives, standards, guidelines, and suitability of lands set forth in § 219.7(e). The planning directives in the Handbook (FSH 1909.12, ch. 20, sec. 21.3) already state this requirement: ''All additions or modifications to the text of plan direction that are made by plan amendments using the 2012 rule must be written in the form of plan components as defined at 36 CFR 219.7(e).'' This paragraph brings the requirement into the text of the 2012 rule to help consolidate procedural requirements for amendments.

The Department also included a narrow exception to the plan component formatting requirements of paragraph (b)(4) for amendments to 1982 rule plans. This exception would apply to an amendment or part thereof that would change (add to or reduce) a management or geographic area or other areas to which existing direction applies, but would not change the text of that plan direction. This exception would allow the responsible official to avoid rewriting the plan direction within that management or geographic area to conform to § 219.7(e), because

reformatting plan direction might accidentally broaden the scope of the amendment. The Department received one comment on this revision, and that comment supported the addition of this paragraph.

Amend § 219.13 To Add Paragraph (b)(5)

The Department modified and added wording to paragraph (b)(5) of this section to specify requirements for applying the substantive requirements within §§ 219.8 through 219.11 to a plan amendment. Elements of the direction provided in the final paragraph (b)(5) were found in paragraphs (b)(5) and (6) and (c)(1) and (2) of this section of the proposed rule. Proposed paragraphs (b)(6), (c)(1), and (c)(2) were removed from the final rule. While the direction in proposed rule paragraphs (c)(1) and (2) was limited to amendments of a plan developed or revised under a prior planning rule, the requirements of paragraph (b)(5) of the final rule apply to all amendments.

The Department modified the first sentence of paragraph (b)(5) for two reasons. First, this sentence now more clearly describes the required process for responsible officials to first *determine* and then *apply* substantive requirements that are directly related to changes being proposed. Second, the Department modified the proposed rule's use of the words ''[e]nsure that the amendment meets'' to ''apply such requirement(s) within the scope and scale of the amendment,'' in order to clarify the Department's intent that the application of directly related substantive requirements be commensurate with the scope and scale of the amendment.

The Department added a sentence to paragraph (b)(5) to clarify that an amendment is not required to bring the amended plan into compliance with all of the substantive requirements of the rule. The Department made this change to apply this clarification to all amendments and to make the wording consistent with the rest of paragraph (b)(5). This sentence makes clear that amendments, unlike revisions, do not require the application of all substantive requirements within §§ 219.8 through 219.11.

The Department added paragraphs (b)(5)(i) and (ii) to provide further clarification on how the responsible official will determine that a specific substantive requirement within §§ 219.8 through 219.11 is directly related to the plan direction being added, modified, or removed by the amendment.

The Department added paragraph (b)(5)(i) to provide additional direction to the responsible official on how to determine whether or not a specific substantive requirement is directly related to the changes being proposed by an amendment. When a specific substantive requirement is associated with either the *purpose* for the amendment or the *effects* (beneficial or adverse) of the amendment, the responsible official must apply that requirement to the amendment. The Department also added wording from the preamble to the proposed rule explaining that the best available scientific information, scoping, effects analysis, monitoring data or other rationale must inform the responsible official's determination.

The purpose of an amendment stems from the need to change the plan, which § 219.13(b)(1) requires that responsible official identify. The responsible official would determine which specific substantive requirements within §§ 219.8 through 219.11 are directly related to that purpose, and then would apply those requirements to the amendment. In addition to the purpose of an amendment, the responsible official must apply specific substantive requirements within §§ 219.8 through 219.11 based on the effects of the amendment. The effects of an amendment can be beneficial or adverse. Where the likely effects are beneficial, the intent of paragraph (b)(5)(i) is that the changes being proposed occur within the context and apply the direction of the directly related substantive requirement in a way that is commensurate with the scope and scale of the amendment.

The Department added paragraph (b)(5)(ii) to provide direction, in addition to the direction in paragraph (b)(5)(i), to the responsible official on when to determine that a substantive requirement is directly related to the amendment based on adverse effects.

The Department recognizes that an amendment may have adverse effects that are less than ''substantial,'' and that would not require the application of associated substantive requirements. However, if scoping or NEPA effects analysis for the amendment reveals substantial adverse effects, the responsible official must identify and apply the specific substantive requirement(s) within §§ 219.8 through 219.11 associated with those effects.

Paragraph (b)(5)(ii)(A) replaces paragraph (b)(6) of the proposed rule. The Department made this change in response to comments about proposed paragraph (b)(6). The Department's intent is that if a substantive requirement is directly related because of adverse effects (§ 219.13(b)(5)(ii)(A)), then the responsible official may decide to modify the proposal to avoid the adverse effects so that the specific substantive requirement is no longer directly related to the changes being proposed. Otherwise, the responsible official must apply the directly related substantive requirement to determine whether the proposal can proceed or whether additional changes to the plan are required as part of the amendment.

Paragraph (b)(5)(ii)(A) also clarifies that if the proposed amendment would substantially lessen protections for a specific resource or use, the responsible official must identify and apply the associated specific substantive requirement(s). The phrase ''when the proposed amendment would substantially lessen protections for a specific resource or use'' replaces the proposed rule paragraph (c)(2) of this section that stated: ''If the proposed amendment would remove direction required by the prior planning regulation, the responsible official must apply the directly related requirements within §§ 219.8 through 219.11.'' This requirement is intended to prevent the removal of protective direction in an underlying plan without the application of the relevant requirements of the 2012 rule.

The Department added paragraph (b)(5)(ii)(B) to help to expedite amendments, including project-specific amendments, which will not have significant environmental effects. The Department anticipates that, for amendments that can be prepared using a categorical exclusion (CE) or environmental assessment (EA) accompanied by a finding of no significant impact (FONSI), it is unlikely that the amendment will have substantial adverse effects that would require the responsible official to apply a substantive requirement that is not otherwise directly related to the changes being proposed. Therefore, under this paragraph, the responsible official may presume that an amendment prepared under a CE or EA will not have substantial adverse effects, barring evidence to the contrary.

The clarifications within paragraph (b)(5) will help the Department and public understand how to apply the substantive requirements within §§ 219.8 through 219.11 when amending plans.

The Department recognizes that resources and uses within the plan area are often connected to one another—nonetheless, the responsible official can distinguish between rule requirements directly related to the amendment and those that may be unrelated or for which

the relationship is indirect. For example:

- Soil and water resources are interrelated, but the responsible official can determine that for a plan amendment that has the purpose of changing standards and guidelines to protect a water body, the water requirements of § 219.8 are directly related, while that section's requirements for soil are not unless the amendment would affect the soil resource.
- A plan amendment to modify recreation access under § 219.10 could be either directly related or unrelated to that section's requirement for the protection of cultural and historic resources, depending upon the nearness and potential effects of the proposed access to the cultural and historic resources in the plan area.

A determination that a substantive requirement is directly related to a proposed amendment does not mean that the amendment must be expanded so that the requirement is applied to the entire plan area, or that the amendment must address every aspect of that specific requirement; the application of the substantive requirement is intended to be commensurate with the scope and scale of the amendment. For example:

- The 2012 rule's requirements for riparian management in § 219.8 would be directly related to an amendment with the purpose of changing plan components in order to reduce sedimentation into a specific riparian area from a particular use, but the responsible official would not be required to apply those requirements to other riparian areas in the plan area. Further, if floodplain values would not be affected by the amendment, it would be beyond the scope of that amendment for the responsible official to be required to apply § 219.8 riparian management requirements to add plan components for the floodplain values of that riparian area.
- An amendment that changes plan components to support habitat for an at-risk species would require application of § 219.9 to those proposed changes, but would not require application of § 219.9 to the entire underlying plan. For example, if the need to change the plan is to identify lands as suitable for an energy corridor, and the proposed corridor would have substantial adverse effects on critical habitat for a threatened species, then the requirements of § 219.9(b) would be directly related to the amendment as applied to that particular species. The responsible official may therefore be required to add standards or guidelines to protect the critical habitat. However, the determination that § 219.9(b) is directly related to the amendment because of the potential impacts to one species would not trigger the application of § 219.9(b) to evaluate ecological conditions for all other species on the unit.

Amend § 219.13 To Add Paragraph (b)(5)—Response to Comments

Comment: Applying the substantive requirements that are directly related. Several respondents were supportive of proposed paragraph (b)(5), and appreciated the clarification that responsible officials must apply the directly related substantive requirements within §§ 219.8 through 219.11 to plan direction modified, added or removed by an amendment. One respondent supported bringing into paragraph (b)(5) the text in the preamble to the proposed rule that stated the Department's intent that the determination of direct relationship be informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.

Response: The Department retained the direction in the proposed paragraph (b)(5) that the responsible official must apply the specific substantive requirement(s) within §§ 219.8 through 219.11 that are directly related to the plan direction being added, modified, or removed by the amendment. The Department added paragraph (b)(5)(i) to bring text from the preamble into the final rule and further clarify direction to the responsible official on how to determine that a specific substantive requirement is directly related to the amendment. In addition, the responsible official must document the rationale as required by § 219.14.

Comment: Amendments do not have to meet all requirements of the rule. Several respondents supported the principle that the 2012 rule intended that amendments be used to incrementally change plans and facilitate adaptive management, and therefore supported proposed paragraph (c)(1) clarifying that amendments of plans developed or revised under a prior planning regulation do not have to bring an amended plan into compliance with all of the requirements within §§ 219.8 through 219.11. Several respondents emphasized that the final rule must provide clarity that an amendment does not trigger application of all of the substantive requirements of the 2012 rule.

Response: The Department agreed, moved the concept in proposed paragraph (c)(1) into paragraph (b)(5), and modified the wording to make it clearer and more consistent with the rest of paragraph (b)(5). The new wording makes clear that the responsible official is not required to apply any substantive requirement that is not directly related to the changes being proposed by an amendment.

Paragraph (b) of the final rule applies to all amendments, whereas proposed paragraph (c) applied only to amendments to plans developed or revised under a prior planning regulation. The Department made this change because, although the clarification is most urgent and immediately relevant for amendments to 1982 rule plans, the Department anticipates that similar clarity and flexibility will be needed for amendments to future 2012 rule plans. While plans developed or revised under the 2012 rule must meet all of the substantive provisions of the 2012 rule at the time of approval, the Forest Service will still need the ability to adaptively change those plans in response to conditions that may be rapidly changing. For example, there could be major tree die-offs associated with drought or major fire events that occur a few years after a plan is revised using the 2012 rule, which could make the plan as a whole out of sync with one or more substantive requirements of the 2012 rule. The Forest Service would still need the ability to incrementally change that plan, without re-applying all of the substantive requirements regardless of the scope and scale of the amendment.

Comment: Avoid effects that would be contrary to a rule requirement. Some respondents were supportive of proposed paragraph (b)(6), which directed the responsible official to ensure that an amendment avoids effects that would be contrary to a specific substantive requirement within §§ 219.8 through 219.11, but some respondents were not supportive and expressed concerns about how the proposed paragraph would be interpreted. For example, one respondent identified concerns about how a responsible official would demonstrate that an amendment avoided contrary effects, and raised the possibility that this paragraph could inadvertently require the premature application of all of the requirements within §§ 219.8 through 219.11, despite express direction otherwise in proposed paragraph (c)(1). However, another respondent supported ensuring that amendments do not erode plan direction necessary to protect forest resources, and the concept of avoiding effects that would be contrary to a rule requirement.

Response: The Department removed proposed paragraph (b)(6) and replaced it with clearer direction in paragraphs (b)(5)(i) and (ii) of this section. The Department also added a sentence to paragraph (b)(5) to clarify that an amendment is not required to bring the amended plan into compliance with all of the substantive requirements of the rule.

The underlying purpose of proposed paragraph (b)(6) was to ensure that a responsible official does not avoid the application of a substantive requirement otherwise not directly related to the amendment, when analysis shows that an amendment is likely to have substantial adverse effects associated with that substantive requirement. For example, paragraph (b)(6) was intended to avoid a scenario in which an amendment proposes to modify a plan to identify a corridor suitable for energy development, but avoids the application of § 219.9(b) despite the corridor's likely adverse effects on critical habitat necessary to contribute to the recovery of a threatened species.

The Department agrees with respondents that proposed paragraphs (b)(5) and (6) could be interpreted as creating two slightly different standards for applying the 2012 rule's substantive requirements in a way that might be confusing to implement. The Department also recognized that there could be confusion about how a responsible official would demonstrate compliance with proposed paragraph (b)(6). The Department therefore removed proposed paragraph (b)(6) and brought the intent of that paragraph into paragraph (b)(5). Instead of the direction to avoid effects contrary to a specific requirement, paragraph (b)(5) instead provides that a responsible official must determine that a substantive requirement *is* directly related to the changes being proposed by an amendment when the likely effects of those changes are substantially adverse in a way that implicates that substantive requirement.

The Department's intent with this direction is that if a substantive requirement is directly related to a proposed amendment because of adverse effects, then the responsible official may modify the proposal to avoid the adverse effects so that the specific substantive requirement is no longer directly related to the changes being proposed. Otherwise, paragraph (b)(5) of this section requires that the responsible apply the directly related substantive requirement. For example, if an amendment would have substantial adverse effects to a historic site, the responsible official could modify the proposal so that the changes no longer have any adverse effect on that site, or apply the related substantive requirement (§ 219.10(b)(1)(ii)) to add to the amendment additional plan components that would provide for the protection of that historic site.

As another example, if a proposed amendment would create an energy corridor that would have substantial adverse effects on critical habitat necessary for the recovery of an endangered species, the responsible official could choose to modify the proposed corridor to avoid the critical habitat. Otherwise, the responsible official must apply § 219.9(b) to review whether the plan provides the ecological conditions necessary to contribute to the recovery of that species. If the plan components would be insufficient to provide such ecological conditions, then the responsible official would be required to develop additional, species-specific plan components, including standards or guidelines, to provide such ecological conditions in the plan area.

These changes should address the respondents' concerns, and are responsive to respondents' comments that this amendment to the 2012 rule must clearly preserve the Agency's flexibility to make timely amendments.

Comment: NFMA diversity requirements and application of the 2012 rule to amended plans. A respondent was concerned that the existing 2012 rule could be interpreted to allow amendments that would eliminate or weaken direction in 1982 rule plans that was designed to meet the 1982 rule's diversity requirement, but avoid application of the 2012 rule's diversity provisions until plan revision. The respondent contends that this scenario would create an untenable gap, because NFMA requires that regulations be in place that provide for diversity. The respondent supported the concept of proposed paragraph (c)(2), which stated: ''If the proposed amendment would remove direction required by the prior planning regulation, the responsible official must apply the directly related requirements within §§ 219.8 through 219.11.''

The respondent also supported a possible addition to proposed paragraph (c)(2) that was mentioned in the preamble to the proposed rule, which would allow the responsible official to choose to demonstrate that the amended plan remains consistent with the 1982 rule. The respondent suggested the following wording: ''If the proposed amendment would remove direction required by the prior planning regulation, the responsible official must apply the directly related requirements within §§ 219.8 through 219.11 or ensure that the amended plan avoids effects that would be contrary to the prior planning regulations.''

In addition, the respondent questioned limiting the applicability of 2012 rule requirements to only the amendment as opposed to an amended plan, and questioned, as a practical matter, how one could determine that an amendment by itself meets substantive requirements without looking at the resulting plan in its entirety.

Response: The Department removed paragraph (c)(2) and instead added direction in paragraph (b)(5)(ii)(A) and paragraph (b)(6) that the responsible official must apply any specific substantive requirement of the rule that is directly related to the amendment when the proposed amendment would *substantially lessen protections* for a specific resource or use. Paragraph (b)(5)(ii)(A) now requires that the responsible official determine that a specific substantive requirement is directly related to an amendment ''when the proposed amendment would substantially lessen protections for a specific resource or use.'' Paragraph (b)(6) addresses the application of the 2012 rule's species-specific requirements when amending a 1982 rule plan, and requires that the responsible official identify whether a species is a potential species of conservation concern (SCC) and, if so, apply the requirements of § 219.9(b) if the proposed amendment would substantially lessen protections for that specific species. These changes eliminate the potential for an amendment to remove from a plan direction that was necessary to meet the 1982 rule's diversity requirement, but avoid application of the 2012 rule's related requirements, addressing respondent's concern about a potential gap in application between the 1982 rule and the 2012 rule's diversity requirements. For example, if a proposed amendment to a plan developed under the 1982 planning rule would remove direction that was necessary to meet the 1982 rule's requirement to provide for the viability of a specific species, paragraph (b)(5) would require that responsible official apply § 219.9(b) to the proposed amendment with regard to that specific species.

The Department decided against adding the suggested wording that would refer back to the 1982 rule for the reasons outlined in the preamble to the proposed rule, and because the Department believes the changes made

in the final rule address respondent's concerns and provide clear direction to responsible officials in a way that meets the Department's original intent for the 2012 rule.

The final rule also continues to require the application of directly related substantive requirements to the changes being proposed by an amendment, and does not require evaluation of the amended plan. In some cases, applying a directly related substantive requirement will lead to the evaluation of plan components across the plan area—for example, to determine whether existing plan components, with the proposed changes, meet the 2012 rule's substantive requirement to provide the ecological conditions necessary for a potential species of conservation concern that would be substantially adversely affected by a proposed amendment. That evaluation, however, is still focused on the amendment itself.

The environmental analysis for an amendment is programmatic. It would include discussions of reasonably foreseeable direct, indirect, and cumulative effects and identify the spatial and temporal extent of the effects. The responsible official would apply the 2012 rule to make any necessary changes to the amendment based on the environmental analysis.

Comment: One respondent was concerned that the proposed amendment to the 2012 rule could allow amendments that would fail to comply with the National Forest Management Act (NFMA).

Response: The 2012 rule clearly requires in § 219.1(f) that plans comply with all applicable laws and regulations, including the NFMA. Nothing in this amendment to the 2012 rule affects that requirement.

Comment: Possible barriers to amendments that apply only to a project and activity. Several respondents were concerned that the proposed rule could create possible barriers to project-specific amendments. One respondent requested that the Forest Service state in the preamble and the final amendment to the 2012 rule that § 219.13(b)(5), (b)(6), and (c)(2) of the proposed amendment to the rule do not operate to apply the substantive requirements in §§ 219.8 through 219.11 to plan amendments made in project or activity level decisions under § 219.15(c)(4) (project-specific amendments). Other respondents were concerned about the application of § 219.13(b)(3) to project-specific amendments.

Response: The Department modified the requirements in the final rule to address respondents' concerns. The 2012 rule clearly recognized that amendments can be made together with, and apply only to, specific project and activity decisions (§ 219.13(b)(1); § 219.15(c)(4)). The Department added an exception in § 219.13(b)(3) for project and activity amendments—see an explanation of that change in above section ''Amend § 219.13(b)(3)—Response to Comments.''

The Department also made changes to the requirements in paragraphs (b)(5) and (b)(6) that should make the amendment process easier. Those paragraphs still apply to all amendments, including amendments made under 36 CFR 219.15(c)(4) that only apply to a project or activity, but the Department believes the clarifications will make it easier to apply the modified requirements to project-specific amendments, particularly those that do not have significant effects. Specifically:

1. The Department clarified in paragraph (b)(5) that the application of directly related substantive requirements is intended to be commensurate with the scope and scale of the amendment. Specifically, the Department modified the words in the proposed rule ''Ensure that the amendment meets'' to ''apply such requirements within the scope and scale of the amendment'' in the final rule to make it easier to appropriately tailor the application of paragraph (b)(5). There may be aspects of a specific substantive requirement that would be required for revision, but would be beyond the scope or scale of the amendment. For example, the responsible official would not have to apply a directly related requirement to a geographic area not affected by the amendment. Furthermore, the responsible official may not have to apply every element within a directly related substantive requirement. For example, with respect to the 2012 rule's requirements for riparian areas in § 219.8(a)(3)(i), when a proposed amendment would have substantial adverse effects only with regard to sedimentation in a specific riparian area, the responsible official must apply the direction in § 219.8(a)(3)(i)(C) on deposits of sediment to that riparian area, but would not have to apply the direction in § 219.8(a)(3)(i)(G) on floodplain values to that riparian area.

While the responsible official is required to apply the directly related substantive requirements to the changes being proposed, the application of those requirements can be as narrow as the amendment. If a project-specific amendment would change only one plan component, or impact only one management area, the responsible official's application of the directly related substantive requirement would reflect the narrow scope and scale of that amendment, and would be based on its purpose and effects.

2. The Department clarified in paragraph (b)(5) that the responsible official is not required to apply any substantive requirements within §§ 219.8 through 219.11 that are not directly related to the amendment.

3. Paragraph (b)(5)(ii)(A) recognizes that an amendment may have adverse effects that are less than substantial, and that would not require the application of an otherwise unrelated substantive requirement within §§ 219.8 through 219.11 to the amendment. Evidence of substantial adverse effects would require the application of the associated substantive requirement, but less than substantial adverse effects would not.

4. The Department added paragraph (b)(5)(ii)(B) to make the process easier for many amendments, including project-specific amendments, by providing that when the environmental documentation for an amendment is a decision memo for a categorical exclusion or an environmental assessment accompanied by a finding of no significant impact, the responsible official may presume that the amendment will not have substantial adverse effects, barring evidence to the contrary.

5. The Department removed proposed paragraph (c)(3) and replaced it with paragraph (b)(6), clarifying the process for applying the species-specific requirements of § 219.9(b) when amending plans developed or revised under the prior planning regulation, and replying to respondents' concerns about the previous wording. See further discussion of this change in the section ''Amend § 219.13 to add paragraph (b)(6)—Response to Comments'' below.

Amend § 219.13 To Add Paragraph (b)(6)

The Department removed the wording of proposed paragraph (b)(6) that stated: ''Ensure that the amendment avoids effects that would be contrary to a specific substantive requirement of this part identified within §§ 219.8 through 219.11.'' The Department made corresponding changes to paragraph (b)(5). An explanation of why the Department moved and changed the wording from proposed paragraph (b)(6) is provided in the section ''Amend § 219.13 to add paragraph (b)(5).''

The Department also removed proposed paragraph (c)(3) that stated: ''If species of conservation concern (SCC) have not been identified for the plan area, the responsible official must use

the regional forester sensitive species list in lieu of SCC when applying the requirements of § 219.9(b) to a plan amendment for a plan developed or revised under a prior planning regulation.''

The Department added new paragraph (b)(6) to clarify the process a responsible official should use when amending a plan developed or revised under a prior planning regulation, if the regional forester has not yet identified the species of conservation concern (SCC) for the plan area. It is possible that in some cases, the regional forester will have already identified SCC within the plan area before plan revision. Paragraph (b)(6) recognizes that possibility, and focuses on providing direction that applies when SCC have not yet been identified. (A similar process clarification is not needed for the other species identified in § 219.9(b)—threatened and endangered, proposed and candidate species—because those are federally listed rather than identified by the regional forester as part of the planning process.) If SCC have been identified, paragraph (b)(6) would not apply, and the responsible official would follow the direction in paragraph (b)(5).

If SCC have not yet been identified, paragraph (b)(6) requires that, when scoping or effects analysis reveals that a proposed amendment would have substantial adverse impacts to a specific species, or if the proposed amendment would substantially lessen protections for a specific species, the responsible official must determine whether or not that species is a potential SCC. The responsible official will make the determination using the definition provided in the 2012 rule (§ 219.9(c)). This paragraph is consistent with the approach already provided by the 2012 rule in § 219.6(b)(5), which requires the responsible official to ''identify and evaluate existing information relevant to the plan area for . . . potential species of conservation concern present in the plan area,'' when developing an assessment. See also Forest Service Planning Handbook 1909.12, Chapter 10, section 12.52, which provides guidance for identifying potential SCC.

If the responsible official determines that the species being evaluated is a potential SCC, paragraph (b)(6) requires the responsible official to apply § 219.9(b) with respect to that species as if the regional forester had identified it as an SCC.

By requiring that the responsible official apply the requirements of § 219.9(b) to a specific potential SCC that an amendment could substantially adversely impact, or if an amendment would substantially lessen protections found in the underlying plan for that species, paragraph (b)(6), along with paragraph (b)(5), carries forward the Department's original intent that the species-specific protections of the 2012 rule apply in the context of amendments. At the same time, this paragraph limits unintended process-related delays or barriers to amendments by making clear that amendments to plans developed under a prior planning regulation can proceed prior to the regional forester's identification of SCC for the plan area.

Amend § 219.13 To Add Paragraph (b)(6)—Response to Comments

Comment: Using the Regional Forester Sensitive Species (RFSS) as proxy. Several respondents were supportive of clarifying how to apply the species-specific protections of the existing rule when amending plans developed under a prior planning regulation, but several respondents expressed concern about using the regional forester sensitive species (RFSS) as a proxy for species of conservation concern (SCC) when SCC have not yet been identified for the plan area, as well as confusion over the scope of proposed paragraph (c)(3). For example, one respondent interpreted the proposed paragraph (c)(3) as requiring that all species on the RFSS list meet the viability requirement in § 219.9(b). Respondents observed that the RFSS list is an imperfect proxy for SCC, with one respondent noting that the RFSS lists may not reflect best available scientific information, were compiled at a regional rather than a unit scale, and did not include a public comment process.

Response: The Department agreed that using the RFSS list as a proxy for SCC is an imperfect and potentially confusing procedural approach. The Department therefore removed from the final rule proposed paragraph (c)(3), which directed the responsible official, if SCC have not been identified, to use the RFSS list in lieu of identifying SCC when applying the requirements of § 219.9(b) to amend a plan developed under a prior planning regulation.

Instead, the Department replaced proposed paragraph (c)(3) with paragraph (b)(6). Paragraph (b)(6) makes clear that SCC do not need to be identified by the regional forester prior to amending a plan developed or revised under a prior planning regulation, or as part of an amendment. Rather, paragraph (b)(6) operates to provide direction and a mechanism for a responsible official to be able to apply the requirements of § 219.9(b) to a specific potential SCC, when that specific species would be adversely impacted by a proposed amendment. The process identified in this new wording relies on the existing definition of SCC in § 219.9(c), and provides guidance similar to that already included in § 219.6(b)(5), which requires that the responsible official identify potential SCC during the assessment phase (an assessment is required prior to plan development or revision, but is optional for an amendment). See also Forest Service Planning Handbook 1909.12, Chapter 10, section 12.52, which provides guidance for identifying potential SCC.

Amend § 219.14

The final rule is unchanged from the proposed rule for this section. The Department changed the caption of paragraph (a) from ''Decision document'' to ''Decision document approving a new plan, plan amendment, or revision.'' The Department redesignated paragraph § 219.14(b) as § 219.14(d).

In addition, the Department removed paragraph (a)(2) which requires responsible officials to explain how plan direction meets the provisions of §§ 219.8 through 219.11. The Department replaced paragraph (a)(2) with two new paragraphs (b) and (c) and renumbered paragraphs (a)(3) through (a)(6).

The new paragraph (b) requires responsible officials to explain in a decision document for a new plan or plan revision how the plan direction meets the provisions of §§ 219.8 through 219.11.

The new paragraph (c) focuses on documentation for a plan amendment. The decision document must include a rationale for the responsible official's determination of the scope and scale of the amendment, which requirements within §§ 219.8 through 219.11 are directly related to that amendment, and how those requirements were applied.

Amend § 219.14 Response to Comments

Comment: Best available scientific information, scoping, effects analysis, monitoring. A respondent was supportive of the documentation requirements and stated that § 219.14 should also require that the responsible official discuss how the best available scientific information, scoping, effects analysis, monitoring data, and other rationale was used to determine which substantive provisions apply. They also stated that the responsible official should be required to explain the relationship between the amendment and the amended plan in the decision document, in the appropriate context of meeting rule requirements.

Response: The final rule in § 219.13(b)(5) requires that the responsible official base the determination that a specific substantive requirement is directly related to the amendment on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and requires that the determination be informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale. The requirements for documentation in this section remain the same as in the proposed rule. The decision document must explain how the responsible official determined which specific requirements within §§ 219.8 through 219.11 apply to the amendment and how those requirements were applied to the amendment. Section 219.14 requires responsible officials to explain their rationale and explain the information they used to make the determination required by § 219.13(b)(5).

Amend § 219.16 To Revise Paragraph (a)(2)

To be in agreement with the change made to § 219.13(b)(3) that now includes an exception so that an amendment that applies only to one project or activity is not considered a significant change in the plan for the purposes of NFMA, a conforming change is needed in paragraph (a)(2) of § 219.16.

Therefore, in the final rule paragraph (a)(2) of § 219.16 specifies that a comment period of 90 days is not required for a proposed amendment that would apply only to one project or activity. However, for such amendments, normal NEPA requirements still apply. Therefore, the Department clarifies that the normal comment period is at least 45 days. See also Forest Service Handbook 1909.15, Chapter 20, section 24.1—Circulating and Filing a Draft Environmental Impact Statement.

Technical Correction to Section 219.11

The Department added a technical correction to fix a mistake made in a correcting amendment to the 2012 rule on July 27, 2012 (77 FR 44144, July 27, 2012). In that correcting amendment, the Forest Service inadvertently removed a sentence about the maximum size limits for areas to be cut in one harvest operation in § 219.11(d)(4). This change would simply restore to § 219.11 the sentence as published in the 2012 rule on April 9, 2012 (77 FR 21161). The Department received no comments on this correction.

Compliance With the Endangered Species Act of 1973, as Amended

In issuing the 2012 rule, the Department prepared both an Environmental Impact Statement (EIS) and a biological assessment to support its final decision. NOAA Fisheries and USFWS each issued a biological opinion pursuant to section 7(a)(2) of the Endangered Species Act. The biological opinions included conservation reviews pursuant to section 7(a)(l) Act (16 U.S.C. 1536(a)(1) and (2)). Copies of the biological assessment, its addendum, and the biological opinions are in the project record for the 2012 rule and can be viewed online at: *http://www.fs.usda.gov/planningrule.*

Because this final rule is to clarify the Department's original intent for plan amendment processes and requirements, and the amendment does not change the planning requirements for endangered or threatened species, the Department has concluded that this final rule does not require additional consultation under sections 7(a)(1) and 7(a)(2) of the Endangered Species Act.

Regulatory Certifications

Energy Effects

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that it does not constitute a significant energy action as defined in the Executive Order.

Environmental Impacts

In issuing the 2012 planning rule, the Department prepared both an Environmental Impact Statement (EIS) and a biological assessment to support its final decision. The EIS is available online at *http://www.fs.usda.gov/planningrule.*

The Department has concluded that this final rule does not require additional documentation under the National Environmental Policy Act. Because this final rule is to clarify the Department's original intent for plan amendment processes and requirements, the range of effects included in the Department's prior NEPA analysis covers this final rule. Therefore, there is no need to supplement the National Forest System Land Management Planning Rule Final Programmatic Environmental Impact Statement of January 2012.

Consultation and Coordination With Indian Tribal Governments

This final rule has been reviewed under Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments. It has been determined that this final rule would not have Tribal implications as defined by Executive Order 13175, and therefore, advance consultation with Tribes is not required.

Regulatory Impact

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

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

Regulatory Flexibility

This final rule has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small business entities as defined by the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required for this final rule.

Federalism

The Forest Service has considered this final rule under the requirements of Executive Order 13132 on federalism. The Agency has determined that the final rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no

further determination of federalism implications is necessary at this time.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12630. It has been determined that this final rule does not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. The Agency has not identified any State or local laws or regulations that are in conflict with this rule or that would impede full implementation of this rule. Nevertheless, in the event that such conflicts were to be identified, (1) all State and local laws and regulations that conflict with the final rule or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to the final rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule would not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

This final rule does not contain recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Forest Service requested and received approval of a new information collection requirement for subpart B as stated in 36 CFR 219.61 and assigned control number 0596–0158 as stated in the final rule approval (77 FR 21161, April 9, 2012). Subpart B specifies the information that objectors must give in an objection to a plan, plan amendment, or plan revision (36 CFR 219.54(c)).

However, recently the Agency learned that subpart B is not considered an information collection under the Paperwork Reduction Act of 1995. Subpart B is not an information collection because the notice indicating the availability of the plan, plan amendment, or plan revision, the appropriate final environmental documents, the draft plan decision document, and the beginning of the objection period is a general solicitation. No person is required to supply specific information pertaining to the respondent, other than that necessary for self-identification.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, the Department amends 36 CFR part 219 as follows:

PART 219—PLANNING

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

■ 2. Revise § 219.3 to read as follows:

§ 219.3 Role of science in planning.

The responsible official shall use the best available scientific information to inform the planning process required by this subpart for assessment; developing, amending, or revising a plan; and monitoring. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered. The responsible official shall document how the best available scientific information was used to inform the assessment, the plan or amendment decision, and the monitoring program as required in §§ 219.6(a)(3) and 219.14(a)(3). Such documentation must: Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.

■ 3. Revise the introductory text to § 219.8 to read as follows:

§ 219.8 Sustainability.

A plan developed or revised under this part must provide for social, economic, and ecological sustainability within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

* * * * *

■ 4. Revise the introductory text to § 219.9 to read as follows:

§ 219.9 Diversity of plant and animal communities.

This section adopts a complementary ecosystem and species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area. Compliance with the ecosystem requirements of paragraph (a) of this section is intended to provide the ecological conditions to both maintain the diversity of plant and animal communities and support the persistence of most native species in the plan area. Compliance with the requirements of paragraph (b) of this section is intended to provide for additional ecological conditions not otherwise provided by compliance with paragraph (a) of this section for individual species as set forth in paragraph (b) of this section. A plan developed or revised under this part must provide for the diversity of plant and animal communities, within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

* * * * *

■ 5. Revise the introductory text to § 219.10 to read as follows:

§ 219.10 Multiple use.

While meeting the requirements of §§ 219.8 and 219.9, a plan developed or revised under this part must provide for ecosystem services and multiple uses, including outdoor recreation, range, timber, watershed, wildlife, and fish, within Forest Service authority and the inherent capability of the plan area as follows:

* * * * *

■ 6. Amend § 219.11 by revising the introductory text and paragraph (d)(4) to read as follows:

§ 219.11 Timber requirements based on the NFMA.

While meeting the requirements of §§ 219.8 through 219.10, a plan developed or revised under this part must include plan components, including standards or guidelines, and other plan content regarding timber management within Forest Service authority and the inherent capability of the plan area, as follows:

* * * * *

(d) * * *

(4) Where plan components will allow clearcutting, seed tree cutting, shelterwood cutting, or other cuts designed to regenerate an even-aged stand of timber, the plan must include standards limiting the maximum size for openings that may be cut in one harvest operation, according to geographic

areas, forest types, or other suitable classifications. Except as provided in paragraphs (d)(4)(i) through (iii) of this section, this limit may not exceed 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types.

* * * * *

■ 7. Amend § 219.13 by revising paragraphs (a) and (b) to read as follows:

§ 219.13 Plan amendment and administrative changes.

(a) *Plan amendment.* A plan may be amended at any time. Plan amendments may be broad or narrow, depending on the need for change, and should be used to keep plans current and help units adapt to new information or changing conditions. The responsible official has the discretion to determine whether and how to amend the plan and to determine the scope and scale of any amendment. Except as provided by paragraph (c) of this section, a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas).

(b) *Amendment requirements.* For every plan amendment, the responsible official shall:

(1) Base an amendment on a preliminary identification of the need to change the plan. The preliminary identification of the need to change the plan may be based on a new assessment; a monitoring report; or other documentation of new information, changed conditions, or changed circumstances. When a plan amendment is made together with, and only applies to, a project or activity decision, the analysis prepared for the project or activity may serve as the documentation for the preliminary identification of the need to change the plan.

(2) Provide opportunities for public participation as required in § 219.4 and public notification as required in § 219.16. The responsible official may combine processes and associated public notifications where appropriate, considering the scope and scale of the need to change the plan. The responsible official must include information in the initial notice for the amendment (§ 219.16(a)(1)) about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment (§ 219.13(b)(5)).

(3) Amend the plan consistent with Forest Service NEPA procedures. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects. Except for an amendment that applies only to one project or activity, a proposed amendment that may create a significant environmental effect and thus requires preparation of an environmental impact statement is considered a significant change in the plan for the purposes of the NFMA and therefore requires a 90-day comment period for the proposed plan and draft environmental impact statement (§ 219.16(a)(2)), in addition to meeting the requirements of this section.

(4) Follow the applicable format for plan components set out at § 219.7(e) for the plan direction added or modified by the amendment, except that where an amendment to a plan developed or revised under a prior planning regulation would simply modify the area to which existing direction applies, the responsible official may retain the existing formatting for that direction.

(5) Determine which specific substantive requirement(s) within §§ 219.8 through 219.11 are directly related to the plan direction being added, modified, or removed by the amendment and apply such requirement(s) within the scope and scale of the amendment. The responsible official is not required to apply any substantive requirements within §§ 219.8 through 219.11 that are not directly related to the amendment.

(i) The responsible official's determination must be based on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.

(ii) When basing the determination on adverse effects:

(A) The responsible official must determine that a specific substantive requirement is directly related to the amendment when scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse effects associated with that requirement, or when the proposed amendment would substantially lessen protections for a specific resource or use.

(B) If the appropriate NEPA documentation for an amendment is a categorical exclusion or an environmental assessment accompanied by a finding of no significant impact (§ 219.13(b)(3)), there is a rebuttable presumption that the amendment will not have substantial adverse effects.

(6) For an amendment to a plan developed or revised under a prior planning regulation, if species of conservation concern (SCC) have not been identified for the plan area and if scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse impacts to a specific species, or if the proposed amendment would substantially lessen protections for a specific species, the responsible official must determine whether such species is a potential SCC, and if so, apply section § 219.9(b) with respect to that species as if it were an SCC.

* * * * *

■ 8. Amend § 219.14 as follows:
■ a. Revise the heading and introductory text to paragraph (a);
■ b. Remove paragraph (a)(2);
■ c. Redesignate paragraphs (a)(3) through (6) as paragraphs (a)(2) through (5), respectively;
■ d. Redesignate paragraph (b) as paragraph (d) and add new paragraph (b);
■ e. Add paragraph (c).

The revisions and additions read as follows:

§ 219.14 Decision document and planning records.

(a) *Decision document approving a new plan, plan amendment, or revision.* The responsible official shall record approval of a new plan, plan amendment, or revision in a decision document prepared according to Forest Service NEPA procedures (36 CFR part 220). The decision document must include:

* * * * *

(b) *Decision document for a new plan or plan revision.* In addition to meeting the requirements of paragraph (a) of this section, the decision document must include an explanation of how the plan components meet the sustainability requirements of § 219.8, the diversity requirements of § 219.9, the multiple use requirements of § 219.10, and the timber requirements of § 219.11.

(c) *Decision document for a plan amendment.* In addition to meeting the requirements of paragraph (a) of this section, the decision document must explain how the responsible official determined:

(1) The scope and scale of the plan amendment; and

(2) Which specific requirements within §§ 219.8 through 219.11 apply to the amendment and how they were applied.

* * * * *

■ 9. Amend § 219.16 by revising paragraph (a)(2) to read as follows:

§ 219.16 Public notifications.

* * * * *

(a) * * *

(2) To invite comments on a proposed plan, plan amendment, or plan revision, and associated environmental analysis. For a new plan, plan amendment, or a plan revision for which a draft environmental impact statement (EIS) is prepared, the comment period is at least 90 days, except for an amendment that applies only to one project or activity. For an amendment that applies only to one project or activity for which a draft EIS is prepared, the comment period is at least 45 days unless a different time period is required by law or regulation or authorized pursuant to 40 CFR 1506.10(d). For an amendment for which a draft EIS is not prepared, the comment period is at least 30 days;

* * * * *

Dated: December 9, 2016.

Robert Bonnie,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2016–30191 Filed 12–14–16; 8:45 am]

BILLING CODE 3411–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 25, 80 and 95

[WTB Docket No. 14–36; FCC 16–119]

Maritime Radio Equipment and Related Matters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) addresses a number of important issues regarding updating rules and requirements for technologies used to locate and rescue distressed ships and individuals in distress at sea or on land to provide better and more accurate data to rescue personnel. The Commission also addresses issues regarding radar equipment, the use of portable marine Very High Frequency (VHF) transmitters by persons on shore; permitting VHF digital small message service (VDSMS); and allowing assignment or transfer of control of ship station licenses. The Commission is amending its rules to permit the maritime community to make use of the most advanced and reliable communications technologies available for the alerting of search and rescue authorities when a vessel or individual is in distress, and to further the Commission's goal of ensuring that the spectrum allocated for emergency communications is used effectively and efficiently.

DATES: Effective January 17, 2017 except for the amendments to §§ 80.233, 80.1061, 95.1402 and 95.1403 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those amendments. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of January 17, 2017, except for the publications in §§ 80.7 (amendatory instruction #7), 80.233, 80.1061, 95.1402 and 95.1403 which are in sections that contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the approval date for the incorporation by reference of publications into those sections.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 1–C823, 445 12th Street SW., Washington, DC 20554, or send an email to *PRA@fcc.gov.* The Commission will send a copy of this *Report & Order,* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

FOR FURTHER INFORMATION CONTACT: James Shaffer, *James.Shaffer@FCC.gov,* Wireless Telecommunications Bureau, (202) 418–0687, or TTY (202) 418–7233. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918, or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order* (*R&O),* in WT Docket No. 14–36, FCC 16–119, adopted on August 31, 2016, and released on September 1, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The *Report and Order* will permit the maritime community to make use of the most advanced and reliable communications technologies available for the alerting of search and rescue authorities when a vessel is in distress. Our decisions herein also further the Commission's goal of ensuring that the spectrum allocated for maritime communications is used effectively and efficiently.

2. The Report and Order incorporates by reference standards for certain marine and personal radio safety devices and a standard to provide VHF Digital Small Message Service (VDSMS) on certain marine VHF channels. For 406 MHz Emergency Position Indicating Radiobeacons (EPIRBs) the Radio Technical Commission for Maritime Services (RTCM) Standard 11000.3 provides the latest technical and testing procedures for EPRIBs and requires them to have an internal navigation device designed to provide position data upon activation. For 406 MHz Personal Locator Beacons (PLBs) the RTCM Standard 11010.2 provides updated technical requirements and adds test procedures for PLBs with integral GNSS receivers or internal navigation devices. For Satellite Emergency Notification Devices (SENDs) RTCM Standard 12800.0 provides minimum requirements for the functional and technical performance of SENDs to ensure reliability in emergency situations. For Maritime Survivor Locating Devices (MSLDs) RTCM Standard 11901.1 provides minimum functional and technical performance of MSLDs. For Automatic Identification System Search and Rescue Transmitters (AIS–SARTs) the International Maritime Organization (IMO) Resolution MSC.246(83) and the International Electrotechnical Commission (IEC) 61097–14 provide the minimum performance requirements and technical specifications for AIS–SARTs. Finally, for VHF digital small message services (VDSMS) RTCM Standard 12301.1 provides technical standard that enables transmission of short digital messages without interfering with other communications on the same channel. Copies of the RTCM documents are available and may be obtained from the Radio Technical Commission for

Maritime Services, 1611 N. Kent Street, Suite 605, Arlington, Virginia 22209. Copies of the IMO documents are available and may be obtained from the International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom; *http://www.imo.org;* Tel. + 44 (0)20 7735 7611; Fax + 44 (0)20 7587 3210; email: *info@imo.org.* Copies of the IEC documents are available and may be obtained from International Electrotechnical Commission (IEC), 3 Rue de Varembe, CH–1211, Geneva 20, Switzerland; *www.iec.ch;* phone: + 41 22 919 02 11; fax: + 41 22 919 03 00; email: *info@iec.ch.* (IEC publications can also be purchased from the American National Standards Institute (ANSI) through its NSSN operation (*www.nssn.org*), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York NY 10036, telephone (212) 642–4900.) The documents are available for inspection at Commission headquarters at 445 12th Street SW., Washington, DC 20554.

Emergency Position Indicating Radio Beacons (EPIRBs)

3. EPIRBs are carried on board ships to alert others of a distress situation, and to assist search and rescue (SAR) personnel in locating those in distress. Specifically, an EPIRB transmits a digital signal on 406.0–406.1 MHz (406 MHz) that is detected by the search and rescue satellite-aided tracking (SARSAT) system operated by the National Oceanic and Atmospheric Administration (NOAA). The digital signal provides distress alerting, homing assistance, country and identification code of the station in distress, and other pertinent information. Traditional EPIRBs rely on satellite Doppler shift to identify the distress location. Some EPIRBs, however, transmit their Global Navigation Satellite System (GNSS) coordinates, which enables SAR authorities to determine an accurate location significantly faster than satellite Doppler shift.

4. EPIRBs must comply with the Radio Technical Commission for Maritime Services (RTCM) EPIRB standard incorporated by reference in our rules. RTCM updated its EPIRB standard to require, among other conditions, an internal navigation device designed to provide position data upon activation. The Commission asked if the new RTCM EPIRB standard should be incorporated by reference in our rules, and sought comment on the appropriate timetable for phasing out certification, manufacture, sale and use of EPIRBs that do not comply with the new standard.

5. All commenters addressing the issue support revising Part 80 to incorporate by reference the revised RTCM EPIRB standard. We agree that such an action is in the public interest because better location availability reduces search time and therefore contributes to the success of emergency rescues. Moreover, most commenters state that the price difference between EPIRBs that broadcast position data and those that do not has diminished or even disappeared, so adopting this requirement will impose little or no additional cost on end-users who purchase EPIRBs that comply with the new standard. We amend our rules to incorporate by reference the revised RTCM EPIRB standard [1] as proposed.[2]

6. With respect to the appropriate timeline for phasing out EPIRBs that do not comply with the new standard, commenters generally agree that the Commission should cease accepting applications for certification of non-compliant EPIRBs beginning one year after the effective date of the rules adopted herein. With minor variations, commenters support prohibiting the continued manufacture, importation, and sale of non-compliant EPIRBs three years after the effective date. We conclude that these time frames are reasonable, and amend our rules to set forth these deadlines. With respect to continued use of non-compliant EPIRBs, most commenters argue that there is no need to establish a date after which use of such EPIRBs will be prohibited because most boat owners replace their EPIRBs at the battery replacement date, which is typically five years after the EPIRB is sold, and one commenter proposes that use of non-compliant EPIRBs be prohibited six years after the rules become effective to allow owners to obtain the full five-year battery life of their current devices. We agree with the commenters that no deadline is required for vessels that voluntarily carry EPIRBs. We note that use by voluntary vessels of EPIRBs that do not comply with the new standard will continue to provide SAR personnel with the same quality of location information as they do currently. However, we adopt a six-year deadline for vessels that are required under our rules to carry EPIRBs, in order to ensure that these vessels provide better location availability during distress situations. We conclude that these transition periods fairly balance the interest in minimizing the compliance burden against the benefits of deploying new maritime safety features expeditiously.

7. Finally, we adopt our proposal to amend our rules to make plain that the use of prior-generation EPIRBs that operate only on 121.5/243 MHz and do not operate on 406 MHz is prohibited. Commenters support this proposal, which simply clarifies a prohibition that was adopted in 2002.

Personal Locator Beacons (PLBs)

8. Like EPIRBs, PLBs send distress signals on 406 MHz that are detected by the COSPAS–SARSAT satellite system and relayed to SAR authorities, but PLBs can be used on land and are intended to meet the distress alerting needs of the general public. PLB use is licensed by rule under part 95 of the Commission's rules, which governs the Personal Radio Services (PRS).

9. PLBs must comply with the RTCM PLB standard incorporated by reference in our rules. RTCM revised its PLB standard to update various technical requirements and to add test procedures for PLBs with integral GNSS receivers or internal navigation devices. The Commission asked if the new RTCM PLB standard should be incorporated by reference in our rules and, if so, sought comment on the appropriate timetable for phasing out the certification, manufacture, sale and use of PLBs that do not comply with the new standard.

10. All commenters who address the question support revising part 95 to incorporate by reference the revised RTCM PLB standard. We agree that such an action is in the public interest because better location availability minimizes search time and therefore contributes to the success of emergency rescues. Moreover, commenters do not believe that compliance with the new

[1] After the Notice of Proposed Rulemaking (Notice) was released, RTCM revised the standard. *See* RTCM Standard 11000.4 for 406 MHz Satellite Emergency Position Indicating Radio Beacons (EPIRBs), dated June 1, 2015. The amended standard adds an option for the use of AIS position locating in addition to or in lieu of 121.5 MHz homing. NTIA requests that we incorporate the amended standard, but we decline to add the AIS option without notice and comment. Until such time as the amended standard is incorporated into part 80, manufacturers may request waivers to permit the equipment authorization and use of AIS EPIRBs.

[2] We also, as proposed, remove references in part 80 to COSPAS–SARSAT C/S T.001, Specification for COSPAS–SARSAT 406 MHz Distress Beacons, and COSPAS–SARSAT C/S T.007 distress beacons specifications because they are included in the RTCM EPIRB standard, and EPIRBs must be tested for compliance with these specifications before being submitted for equipment authorization. We decline RTCM's suggestion to incorporate by reference the revised version of ITU–R Recommendation M.633–3, ''Transmission characteristics of a satellite emergency position-indicating radiobeacon (satellite EPIRB) system operating through a low polar-orbiting satellite system in the 406 MHz band,'' 2004 (ITU–R M.633–3), as beyond the scope of the *Notice,* because the Commission did not propose to amend the rules to revise the version of ITU–R M.633 that is incorporated by reference.

testing protocol will materially affect PLB prices, so adopting this requirement will impose little or no additional cost on purchasers of PLBs that comply with the new standard. We amend our rules to incorporate by reference the revised RTCM PLB standard.[3]

11. With respect to the appropriate timeline for phasing out PLBs that do not comply with the new standard, commenters agree that the Commission should cease accepting applications for certification of non-compliant PLBs beginning one year after the effective date of the rules adopted herein. With some minor variations, commenters support prohibiting the continued manufacture, importation, and sale of non-compliant PLBs three years after the effective date. We conclude that these time frames are reasonable, and amend our rules to set forth these deadlines. We agree with the majority of commenters that there is no need to establish a date after which use of non-compliant PLBs will be prohibited, because PLB use is voluntary and the continued use of PLBs that do not comply with the new standard will deliver the current quality of service to SAR personnel for distress alerting and locating capabilities. We conclude that these transition periods fairly balance the interest in minimizing the compliance burden against the benefits of deploying new safety features expeditiously.

12. The Commission also sought comment on whether, as recommended by the Secretariat of the International COSPAS–SARSAT Programme (COSPAS–SARSAT), to amend part 95 to limit the use of 406 MHz band by PLBs to ''distress and safety *of life* communications,'' instead of ''distress and safety communications.'' This clarification would make clear that PLB use should be under emergency conditions and for survival purposes. While non-life threatening emergencies or safety communications are important functions, use of PLBs to alert rescuers should be limited to situations of grave and imminent danger. This excludes some situations that might be broadly considered as safety communications. We agree with RTCM, the only commenter addressing this issue, that this clarification of the intended use of PLBs would be beneficial, and we amend the rule accordingly. As recommended by COSPAS–SARSAT, we also amend the rules to clarify that, rather than ''issu[ing]'' unique identification codes, NOAA recognizes codes that manufacturers create based on COSPAS–SARSAT guidance.

13. PLB owners must register their beacons with NOAA.[4] Part 95 requires manufacturers to include a postage pre-paid registration card with each PLB, and to set forth NOAA's mailing address on the PLB label.[5] Commenters state that NOAA's current preferred method of beacon registration is online. We will therefore add the NOAA Web site information to our rules, but decline ACR's suggestion that we require manufacturers to add the Web site address to the PLB label as beyond the scope of the *Notice*, which did not propose to change the labeling requirements.[6] Manufacturers may of course include such information with each PLB if they choose.

Satellite Emergency Notification Devices (SENDs)

14. Although there is no established definition for the term ''SENDs,'' it is often used to refer to small transmitters that provide a means for individuals in remote areas to alert others of an emergency situation and to aid SAR personnel to locate those in distress. These devices differ from PLBs in that they operate on satellite networks other than the 406 MHz COSPAS–SARSAT system. The service provided is typically a subscription service that sends data to a satellite, and is then used to create a Web-based report that enables the tracking of persons.

15. RTCM, with participation from the mobile satellite industry, has developed minimum requirements for the functional and technical performance of SENDs to ensure that these devices will work with a high degree of reliability in emergency situations. The Commission sought comment on RTCM's proposal that the part 95 rules be amended to incorporate by reference its SEND standard, and to prohibit devices that do not meet that standard from being marketed as SENDs. The Commission noted, however, that such devices do not require authorization under part 95 because they already can operate pursuant to the part 25 mobile satellite service (MSS) rules, and tentatively concluded that incorporating what is effectively a voluntary standard is unnecessary and would not further the public interest.

16. Commenters are split regarding whether we should incorporate by reference RTCM's SEND standard into our rules. Most argue that it should be incorporated because users rely on satellite emergency notification services in emergency situations and expect devices to perform in a manner similar to PLBs (which, as discussed above, *are* required to meet the relevant RTCM standard), but the part 25 MSS rules do not include any specific provisions to ensure that devices will perform with the degree of reliability specified in the RTCM standard. ACR Electronics Inc. (ACR), a manufacturer of survival products, argues further that compliance with the RTCM SEND standard should be mandatory for all satellite communications devices outside the 406 MHz band that provide emergency distress notification functions, except for devices that offer real-time two-way switched voice service. Iridium Satellite LLC (Iridium), an MSS provider, argues that incorporation by reference of the standard is unnecessary because voluntary compliance with the SEND standard by manufacturers and MSS providers is sufficient.

17. We are adopting RTCM's proposal to the extent that we incorporate the RTCM SEND standard by reference under the part 25 MSS rules for devices that are marketed as SENDs. We address commenters' concerns about consumer expectations by amending part 25 to specify that the terms ''SEND'' and ''Satellite Emergency Notification Device'' may be used in marketing and sales only for devices that meet the requirements set forth in the RTCM SEND standard. We agree with Iridium that requiring all devices that are capable of transmitting an emergency distress alert to meet the RTCM SEND standard is overbroad.[7]

Maritime Survivor Locating Devices (MSLDs)

18. MSLDs are intended for use by persons at risk of falling into the water such as mariners and workers on marine installations or docks, or by divers

[3] As suggested by commenters, we also remove the technical requirements set forth in section 95.1402(b) of the Commission's rules because those requirements are included in the revised RTCM PLB standard. We also, as above with respect to EPIRBs, remove the references in part 95 to COSPAS–SARSAT T.007 because it is included in the RTCM PLB standard.

[4] No commenter supported COSPAS–SARSAT's request that the Commission amend part 95 to emphasize that PLB owners are required to register their beacons. We conclude that the proposal is unnecessary because the rule already makes this clear.

[5] We note in response to commenters' concern that the mailing address set forth in the rule is obsolete that the rule was updated after those comments were filed.

[6] We note that ACR's suggestion that we prohibit the marketing as a ''Personal Locator Beacon'' or ''PLB'' of any device that does not meet the RTCM standard is under consideration in another proceeding.

[7] Implementation of such a requirement could require a more precise definition of what devices are covered, which is beyond the scope of the record in this proceeding.

returning to the surface out of sight of their dive boats. They can be worn on or as part of a garment or life jacket, and are intended to facilitate the rescue of personnel in the vicinity of their vessel or structure so that immediate assistance can be rendered without a time-consuming and expensive SAR operation. In light of this narrower focus, MSLDs do not operate on a frequency monitored by COSPAS–SARSAT, and do not transmit with as much power or for as long as EPIRBs or PLBs. Instead, MSLDs transmit on frequencies that are received on a device monitored by personnel at the MSLD-wearer's vessel or facility.

19. RTCM has developed minimum requirements for the functional and technical performance of MSLDs. The Commission proposed to incorporate by reference RTCM's MSLD standard into the part 95 rules to allow certification and use of devices meeting the standard, and asked whether manufacturers should be required to coordinate their applications for equipment certification of MSLDs with the United States Coast Guard (Coast Guard). The Commission also sought comment on the appropriate timetable for phasing out manufacture, sale and use of devices intended to aid in the location of persons in the water that were approved by waiver but do not comply with RTCM's MSLD standard.

20. Commenters agree that RTCM's MSLD standard should be incorporated by reference in our rules. We agree that allowing for certification and use of MSLDs will enhance safety for individuals on or near the water by providing for earlier alerting and rescues that are both more rapid and effective and less costly, and we therefore incorporate the standard into part 95 as proposed.[8] We also agree with commenters who support coordination with the Coast Guard for equipment authorization to assure that MSLDs meet the RTCM MSLD standard, and will therefore also require such coordination. As suggested by RTCM, certification of MSLDs that include a function intended to send a distress message directly to the Coast Guard or any other SAR organization will not be permitted unless that function is endorsed by the Coast Guard in its pre-certification review. With respect to the appropriate timeline for phasing out devices that were approved by waiver but do not comply with the standard, we will prohibit the continued manufacture, importation, and sale of non-compliant devices as of one year after the effective date of the rules adopted herein, but will permit the continued use of those devices.

Automatic Identification System Search and Rescue Transmitters (AIS–SARTs)

21. Like EPIRBs, SARTs are carried on board ships and survival craft to alert others of a distress situation, and to assist SAR personnel in locating those in distress. Currently, the part 80 rules authorize only traditional SARTs, which act as active reflectors of 9.2–9.5 GHz (9 GHz) radar signals. Each time a 9 GHz SART detects a pulse from the radar of a searching vessel that is within approximately five nautical miles, the SART transmits a signal that is displayed on the screen of the radar that activated it.

22. An AIS–SART, as part of the AIS maritime navigation safety communications system, is used to locate a survival craft or distressed vessel by transmitting a unique identification code and GPS coordinates to all AIS-enabled devices within VHF radio range. The International Maritime Organization (IMO) has amended the GMDSS regulations to permit AIS–SARTs as an alternative to 9 GHz SARTs. In addition, the International Electrotechnical Commission (IEC) approved performance and technical specifications for AIS–SARTs. In the *Notice,* the Commission proposed to incorporate by reference the IMO and IEC standards for AIS–SARTs into our rules, which would allow certification and use of AIS–SARTs meeting those standards, and to require manufacturers to coordinate AIS–SART equipment certification applications with the Coast Guard.

23. We agree with the commenters that AIS–SARTs represent an important tool for improving maritime safety and have gained international acceptance, and therefore revise Part 80 to incorporate by reference the IMO and IEC standards for AIS–SARTs. We will require that AIS–SART equipment certification applications be coordinated with the Coast Guard, as is required for other AIS equipment. We agree with RTCM's suggestion to use the term ''search and rescue locating devices'' when referring to both traditional SARTs and AIS–SARTs, but we decline, as beyond the scope of this proceeding, its request that we amend the rules regarding the stowage of these devices on ships equipped with free-fall lifeboats.

Ship Radar

24. Section 80.273 of the Commission's Rules contains the technical requirements for radar equipment installed on ships, and incorporates by reference relevant international standards for such equipment, including IEC 62388 for compulsory vessels and IEC 62252 for voluntary vessels. As proposed in the *Notice,* we amend part 80 to remove the incorporation by reference of IEC 62252 because manufacturers have not designed or built radar sets to this standard, and IEC has withdrawn the standard. We understand that RTCM is in the process of drafting new ship radar standards for voluntary vessels and anticipates publishing these standards in the near future. Voluntary vessels are permitted to carry radar equipment intended for use solely on voluntary vessels, without reference to any particular standard, until appropriate standards are developed and adopted. As proposed, we also correct a cross-reference to clarify that radar installations on compulsory vessels must meet IEC 62388.[9]

Portable Marine VHF Radios on Shore

25. Section 80.115(a)(2) of the Commission's Rules prohibits the use on shore of a portable marine VHF radio associated with a vessel. The GMDSS Task Force proposed that the rule be amended to allow persons on shore within three miles of the water to use portable marine VHF radios to communicate with the vessel that is subject to the ship station authorization. The Commission, however, noted that limitations on the use of maritime frequencies are intended to minimize interference to maritime communications (particularly distress and safety messages), and tentatively concluded that permitting the use of portable marine VHF radio transmitters on shore would not further the public interest. We questioned the practical enforceability of a three-mile rule, and asked whether shore parties' communications needs could be met by commercial mobile radio service (CMRS) or PRS options. The Commission also asked commenters supporting the proposal to discuss what limitations would be appropriate to

[8] After the *Notice* was released, RTCM revised the standard. The amended standard adds an option permitting ''open loop'' operation allowing alerting of all vessels in the vicinity with Digital Selective Calling (DSC) radios of the alert situation. DSC is a digital signaling system that automatically allows ship and shore stations to call one another directly, similar to the use of a telephone, and establish contact. RTCM requests that we incorporate its amended MSLD standard but we decline to authorize the ''open loop'' option without notice and comment. Instead, we incorporate by reference the 2012 version of RTCM's MSLD standard.

[9] In addition, as suggested by commenters, we revise section 80.273(b) to agree with the latest IEC 62388 standard and require ''effective diameter of not less than 320 millimeters (12.6 inches)'' for the radar display, rather than 340 millimeters (13.4 inches).

minimize the impact on maritime communications.

26. The GMDSS Task Force acknowledges that CMRS options likely will be preferred in areas with reliable coverage, and asserts that this makes it unlikely that use of low-powered portable marine VHF radio radios on land will interfere with maritime communications. It also argues that permitting such use will further the public interest by encouraging more boaters to a carry a VHF radio, which has safety benefits not available from CMRS or PRS options because marine VHF channels can be used to contact the Coast Guard and other nearby vessels in a distress situation, for bridge-to-bridge communications, and to receive maritime safety information broadcasts.

27. We agree with commenters that the public interest will be served by allowing the use of portable VHF radios ashore, so long as it is limited to enhancing the usefulness of marine VHF radios without negatively affecting maritime communications. Such limited onshore use will promote flexibility in the use of marine radio equipment in a manner that furthers maritime safety by encouraging more boaters to a carry a VHF radio. Specifically, as suggested by ACR, we will permit use of portable marine VHF radios only in areas adjacent to the water, such as docks and beaches. In addition, as suggested by RTCM, and consistent with our requirements for offshore use, onshore communications using such radios must relate to the operational and business needs of the associated vessel, and must be limited to the minimum practicable transmission time.[10] We amend section 80.115 accordingly.[11] We caution operators that the Commission's Enforcement Bureau will continue to investigate complaints against operators who improperly use marine VHF radios, particularly any violation that concerns unauthorized transmissions on 156.800 MHz (VHF Channel 16).

VHF Digital Small Message Services (VDSMS)

28. VDSMS is intended to provide short-distance digital messaging ship-to-ship, shore-to-ship and ship-to-shore. The International Telecommunication Union (ITU) has recognized the future need for worldwide systems to exchange data and email on maritime VHF channels and the availability of new digital data systems that provide this service efficiently and without harmful interference. In the United States, however, maritime communications generally are limited to particular emission designators in order to avoid interference between users; a full range of data transmissions is permitted only on VHF Public Coast frequencies and one channel in Alaska.

29. RTCM developed a technical standard for VDSMS that enables transmission of short digital messages without interfering with other communications on the same channel. The Commission proposed to amend part 80 to incorporate by reference the RTCM VDSMS standard in order to permit transmission of short data messages on VHF maritime private communications frequencies. It tentatively concluded that accommodating VDSMS in the Commission's rules would advance the Commission's goal of promoting flexibility and efficiency in the use of marine radio equipment in a manner that would further maritime safety.

30. RTCM, the only commenter addressing this issue, agrees that part 80 should be revised to incorporate by reference its VDSMS standard. It argues that adopting a single VDSMS standard will avoid use of a variety of different and potentially incompatible data protocols, and ensure VDSMS communications are not disrupted. We agree, and amend part 80 to incorporate by reference the RTCM VDSMS standard. We note that VDSMS will not be permitted on or adjacent to marine safety and security channels and other channels excluded under Appendix 18 of the ITU Radio Regulations.[12] Further, VDSMS operation on the non-excluded VHF frequencies is subject to existing eligibility requirements.

Prohibition of Applications To Assign or Transfer Control of Ship Licenses

31. Under section 1.948 of the Commission's rules, ship station licenses may not be assigned or transferred. Instead of efficiently assigning or transferring the license to another entity, ship station licensees must submit the ship station license to the Commission for cancellation; and the entity acquiring the vessel must instead apply for new ship licenses in its own name. In the *Notice,* the Commission noted that most other types of wireless radio licenses may be assigned or transferred, and proposed to remove the prohibition on the assignment or transfer of ship station licenses. The Commission reasoned that ''[t]he prohibition on assigning or transferring ship licenses . . . requires applicants and Commission licensing personnel to undertake a relatively cumbersome process when control of ship radio station assets are to change hands, and there appears to be little public interest benefit, if any, for continuing the prohibition.''

32. We believe that it would serve the public interest to permit the assignment and transfer of control of ship station licenses. Permitting the assignment and transfer of control of ship station licenses would be more administratively efficient than maintaining the current prohibition on applications to assign or transfer such licenses, and would reduce transactional costs for ship station licensees.[13] RTCM, the only commenter addressing this issue, agrees that it would be beneficial to permit the assignment and transfer of ship station licenses. We will therefore amend section 1.948(b)(5) to remove the prohibition of applications to assign or transfer control of ship station licenses. Ship station licensees and potential licensees are cautioned that failure to obtain Commission approval for an assignment or transfer of control of a ship station license may result in enforcement action being taken against the entities involved.

Editorial Corrections

33. As proposed, we correct certain part 80 rules to change erroneous references to Title II of the Communications Act to refer to Title III, restore subparagraphs that were inadvertently deleted, and correct typographical errors. No commenter addressed these corrections.

Procedural Matters

A. Paperwork Reduction Act Analysis

34. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and

[10] We remind all operators that superfluous radiocommunication is considered an unauthorized transmission in the Maritime Services. *See* 47 CFR 80.89(a).

[11] We amend the rule to clarify that portable VHF DSC radios should operate on frequency 156.525 MHz (Channel 70), which is the DSC Distress, Safety and Calling channel but was not specifically listed in section 80.115.

[12] We include port operations channels among the marine safety channels on which VDSMS will not be permitted. Port operations communications are ''[c]ommunications in or near a port, in locks or in waterways between coast stations and ship stations or between ship stations, which relate to the operational handling, movement and safety of ships and in emergency to the safety of persons.''

[13] In addition, we discern no basis to treat ship station licenses differently in this regard from the other types of wireless licenses for which assignment and transfer of control applications are accepted.

other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

35. In this present document, we have we establish requirements for the certification of MSLDs, and AIS–SARTs devices. The rule would require, *inter alia,* that applicants for certification submit specified information, including copies of test reports and test data, to the United States Coast Guard prior to filing their applications with the Commission, and that they include with their applications to the Commission copies of letters from the United States Coast Guard stating that the device in question satisfies all of the requirements of all the pertinent standard. We find that the certification requirements adopted herein would not impose an undue burden or excessive cost on such manufacturers, including those that have fewer than 25 employees.

B. Report to Congress

The Commission will send a copy of this *R&O* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the rules adopted in this Report and Order.

37. *Summary.* The rules adopted in the *Report and Order* are intended to update the rules and requirements for technologies used to locate and rescue distressed ships and individuals in distress at sea or on land to provide better and more accurate data to rescue personnel. The Commission amends its rules to (a) require emergency position indicating radio beacons (EPIRBs) to be capable of broadcasting position data when activated; (b) update the equipment standards for Personal Locator Beacons (PLBs); (c) provide that only devices that meet the RTCM standard for Satellite Emergency Notification Devices (SENDs) may be marketed for use in the United States as SENDs; (d) permit equipment certification and use of Maritime Survivor Locating Devices (MSLDs) that comply with RTCM standards; (e) provide for equipment certification and use of Automatic Identification System Search and Rescue Transmitters (AIS–SARTs) that comply with international standards; (f) clarify the rules regarding ship radar equipment; (g) permit the use of portable marine VHF radio transmitters by persons on shore that are on or adjacent to the dockside of the associated vessel; (h) permit VHF digital small message services (VDSMS) on certain maritime VHF channels; (i) allow assignment or transfer of control of ship station licenses; and (j) correct certain typographical errors.

38. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply.* The closest estimate of the number of small businesses that may potentially be affected by our rule changes is the SBA's ''Wireless Telecommunications Carriers (except Satellite)'' category. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules for the category Wireless Telecommunications Carriers (except satellite) is that a business is small if it has 1,500 or fewer employees. Census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of fewer than 1000 employees. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small.

39. *Marine Radio Services.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Report and Order.

40. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The U.S. Census defines this industry as comprising ''establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by the establishments are transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a size standard for this industry which classifies any businesses in this industry as small if it has 750 or fewer employees. Census data for 2007 indicate that 939 such businesses operated in that year. Of that number, 912 businesses operated with fewer than 500 employees. Based on this data, we conclude that a majority of businesses in this industry are small by the SBA standard.

41. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small*

Entities. In the *Report and Order* we adopt six rule amendments that may affect reporting, recordkeeping or other compliance requirements for small entities. First, we amend section 80.1061 of the rules to require that EPIRBs comply with the RTCM Standard 11000.3, and to mandate that vessels that are required to carry EPIRBs replace their existing radiobeacons with EPIRBs that meet the new standard within six years of the effective date of the rule amendment. Second, we amend section 95.1402 of the rules to require that PLBs comply with the RTCM Standard 11010.2. Third, we adopt section 25.301 of the rules to specify that the term SEND refers only to a device that meets the requirements set forth in the RTCM SEND Standard 12800.0 and make it unlawful to market for use in the United States a non-compliant device as a SEND. Fourth, we amend section 95.1043 of the rules to require that MSLDs comply with the RTCM Standard 11901.1. Fifth, we amend section 80.233 of the rules to require that AIS–SARTs comply with the IEC Standard 61097–14 Ed. 1.0 (2010–02) and IMO Resolution MSC.246(83). Sixth, we amend section 80.364 of the rules to require that VDSMS equipment comply with the RTCM Standard 12301.1 We conclude that none of these matters will have a direct, significant economic impact on a substantial number of small entities. The equipment standards are in use internationally, so it imposes no additional burden on manufacturers to meet those standards for equipment to be used in the United States. Moreover, most boat owners replace their EPIRBs at the battery replacement date, which is typically five years after the EPIRB is sold, so a six-year deadline for certain vessels will not have a significant impact.

42. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

43. *Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* With respect to all of the rules adopted in the *Report and Order* that may affect reporting, recordkeeping and other compliance requirements for small entities, as identified in this FRFA we have considered how we might minimize the economic impact on small entities, and we have considered alternative measures that might minimize that impact. As a general matter, the alternatives considered, and in many cases adopted, include exempting small entities from the requirement; providing ''grandfathering'' protection from the requirement; providing a transition period to give either small entities or all affected entities additional time to come into compliance; and imposing a less burdensome requirement, either for small entities or for all affected entities. In addition, to the extent we establish here new standards for authorization of marine radio equipment, we have generally required compliance with performance standards, rather than prescribing a particular equipment design.

Ordering Clauses

44. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 332(a)(2), that parts 1, 25, 80, and 95 of the Commission's rules ARE AMENDED as set forth in the attached Appendix B, and such rule amendments SHALL BE EFFECTIVE thirty (30) days after publication of the rules amendments in the **Federal Register**, except for 47 CFR 80.233, 80.1061, 95.1402, 95.1043, which contain new information collection requirements that require approval by the OMB under the PRA and which WILL BECOME EFFECTIVE after such approval, on the effective date specified in a document that the Commission publishes in the **Federal Register** announcing such approval and effective date.

List of Subjects

47 CFR Part 1

Communications equipment, Radio.

47 CFR Parts 25, 80 and 95

Communications equipment, Incorporation by reference, Radio.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 25, 80 and 95, as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 155, 157, 225, 303(r), 309, 1403, 1404, 1451, and 1452.

■ 2. Section 1.948 is amended by revising paragraph (b)(5) to read as follows:

§ 1.948 Assignment of authorization or transfer of control, notification of consummation.

* * * * *

(b) * * *

(5) Licenses, permits, and authorizations for stations in the Amateur, Commercial Operator and Personal Radio Services (except 218–219 MHz Service) may not be assigned or transferred, unless otherwise stated.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for Part 25 continues to read as follows:

Authority: Interprets or applies 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 4. Subpart E, consisting of § 25.301, is added to read as follows:

Subpart E—Miscellaneous

§ 25.301 Satellite Emergency Notification Devices (SENDs).

No device described by the marketer or seller using the terms ''SEND'' or ''Satellite Emergency Notification Device'' may be marketed or sold in the United States unless it complies with the requirements of RTCM 12800.0. RTCM 12800.0, ''Satellite Emergency Notification Devices (SENDs),'' dated August 1, 2011 is incorporated by reference in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. Copies of the document are available and may be obtained from the Radio Technical Commission for Maritime Services, 1611 N. Kent Street, Suite 605, Arlington, Virginia 22209. The document is available for inspection at Commission headquarters at 445 12th Street SW., Washington, DC 20554. Copies may also be inspected 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/code_of_federal_regulations/ibr_locations.html.*

PART 80—STATIONS IN THE MARITIME SERVICES

■ 5. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 6. Section 80.7 is amended by:

■ a. In paragraph (d)(5), removing ''IEC 1097–3:1994'' and adding in its place ''IEC 61097–3:1994''; in paragraph (d)(8), removing ''IEC 1097–7:1996'' and adding in its place ''IEC 61097–7:1996''; in paragraph (d)(12), removing ''IEC 1097–12:1996(E) and adding in its place ''IEC 61097–12:1996(E).

■ b. Removing paragraph (d)(17), redesignating paragraphs (d)(14) through (16) as (d)(15) through (17), and adding and reserving new paragraph (d)(14); and

■ c. Revising paragraph (f)(3) and adding paragraph (f)(4).

The additions and revisions read as follows:

§ 80.7 Incorporation by reference.

* * * * *

(f) * * *

(3) RTCM Standard 11020.1 (''RTCM 11020''), ''RTCM Standard 11020.1, Ship Security Alert Systems (SSAS) Using the Cospas-Sarsat Satellite System,'' October 9, 2009, IBR approved for § 80.277.

(4) RTCM Standard 12301.1 (''RTCM 12301''), ''VHF–FM Digital Small Message Services,'' July 10, 2009, IBR approved for § 80.364(a).

■ 7. Section 80.7 is amended by:

■ a. Adding paragraphs (b)(28);

■ b. Redesignating paragraphs (d)(14) through (19) as (d)(15) through (20);

■ c. Adding a new paragraph (d)(14);

■ d. Revising paragraph (f)(2); and

■ e. Removing paragraph (g).

The additions and revisions read as follows:

§ 80.7 Incorporation by reference.

* * * * *

(b) * * *

(28) IMO Resolution MSC.246(83), (''IMO Resolution MSC.246(83)'') ''Adoption of Performance Standards for Survival Craft AIS Search and Rescue Transmitters (AIS–SART) for Use in Search and Rescue Operations,'' IBR approved for § 80.233(a).

* * * * *

(d) * * *

(14) IEC 61097–14 (''IEC 61097–14''), Edition 1.0, 2010–02, ''Global maritime distress and safety system (GMDSS)—Part 14: AIS search and rescue transmitter (AIS–SART)—Operational and performance requirements, methods of testing and required test results,'' IBR approved for § 80.233(a).

* * * * *

(f) * * *

(2) RTCM Standard 11000.3 (''RTCM 11000''), ''406 MHz Satellite Emergency Position Radiobeacons (EPIRBs),'' June 12, 2012, IBR approved for § 80.1061(a) and (c).

* * * * *

■ 8. Section 80.59 is amended by revising the note in paragraph (a)(1) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) * * *

(1) * * *

Note to paragraph (a)(1): Nothing in this section prohibits Commission inspectors from inspecting ships. The mandatory inspection of U.S. vessels must be conducted by an FCC-licensed technician holding an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License in accordance with the following table:

* * * * *

■ 9. Section 80.115 is amended by revising paragraphs (a)(1) through (4) to read as follows:

§ 80.115 Operational conditions for use of associated ship units.

(a) * * *

(1) It must only be operated on the safety and calling frequency 156.800 MHz or 156.525 MHz or on commercial or noncommercial VHF intership frequencies appropriate to the class of ship station with which it is associated.

(2) Except for safety purposes, it must only be used to communicate with the ship station with which it is associated or with associated ship units of the same ship station. Such associated ship units may be used from shore only adjacent to the waterway (such as on a dock or beach) where the ship is located. Communications from shore must relate to the operational and business needs of the ship including the transmission of safety information, and must be limited to the minimum practicable transmission time.

(3) It must be equipped to transmit on the frequency 156.800 MHz or 156.525 MHz and at least one appropriate intership frequency.

(4) Calling must occur on the frequency 156.800 MHz or 156.525 MHz unless calling and working on an intership frequency has been prearranged.

* * * * *

■ 10. Section 80.157 is revised to read as follows:

§ 80.157 Radio officer defined.

A *radio officer* means a person holding a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License issued by the Commission, who is employed to operate a ship radio station in compliance with Part II of Title III of the Communications Act. Such a person is also required to be licensed as a *radio officer* by the U.S. Coast Guard when employed to operate a ship radiotelegraph station.

■ 11. Section 80.159 is amended by revising paragraph (b) to read as follows:

§ 80.159 Operator requirements of Title III of the Communications Act and the Safety Convention.

* * * * *

(b) Each cargo ship equipped with a radiotelegraph station in accordance with Part II of Title III of the Communications Act and which has a radiotelegraph auto alarm must carry a radio officer holding a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License who has had at least six months service as a radio officer on board U.S. ships. If the radiotelegraph station does not have an auto alarm, a second radio officer who holds a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License must be carried.

* * * * *

■ 12. Section 80.203 is amended by adding paragraphs (b)(3)(i) through (iv) to read as follows:

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(b) * * *

(3) * * *

(i) Internal adjustments of the transmitter;

(ii) Use of controls normally inaccessible to the station operator;

(iii) Use of external devices or equipment modules made available only to service and maintenance personnel through a service company; and

(iv) Copying of a channel selection program directly from another transmitter (cloning) using devices and procedures made available only to service and maintenance personnel through a service company.

* * * * *

■ 13. Section 80.231 is amended by revising paragraph (c) introductory text and paragraph (e) to read as follows:

§ 80.231 Technical requirements for Class B Automatic Identification System equipment.

* * * * *

(c) Prior to submitting a certification application for a Class B AIS device, the following information must be submitted in duplicate to *typeapproval@uscg.mil* or the

Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–7509:

* * * * *

(e) A certification application for an AIS device must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all of the requirements specified in IEC 62287–1, a copy of the technical test data, and the instruction manual(s).

■ 14. Section 80.233 is added to subpart E to read as follows:

§ 80.233 Technical requirements for Automatic Identification System Search and Rescue Transmitters (AIS–SART) equipment.

(a) Automatic Identification System Search and Rescue Transmitter (AIS–SART) equipment must meet the technical requirements of IEC 61097–14 and IMO Resolution MSC.246(83) (incorporated by reference, *see* § 80.7(b)).

(b) Prior to submitting a certification application for an AIS–SART device, the following information must be submitted in duplicate to the U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7126, Washington, DC 20593–7126:

(1) The name of the manufacturer or grantee and the model number of the AIS–SART device; and

(2) Copies of the test report and test data obtained from the test facility showing that the device complies with the environmental and operational requirements identified in IEC 61097–14.

(c) After reviewing the information described in paragraph (b) of this section, the U.S. Coast Guard will issue a letter stating whether the AIS–SART device satisfies all of the requirements specified in IEC 61097–14.

(d) A certification application for an AIS–SART device must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all of the requirements specified in IEC 61097–14, a copy of the technical test data, and the instruction manual(s).

■ 15. Section 80.273 is amended by removing paragraph (b), redesignating paragraphs (c) and (d) as paragraphs (b) and (c), and revising newly redesignated paragraph (b) to read as follows:

§ 80.273 Radar standards.

* * * * *

* * * * *

(b) For any ship of 10,000 tons gross tonnage and upwards or that is otherwise required to be equipped with two radar systems, each of the two radar systems must be capable of operating independently and must comply with the specifications, standards and general requirements set forth on paragraph (a) of this section. One of the systems must provide a display with an effective diameter of not less than 320 millimeters (12.6 inches), (16-inch cathode ray tube). The other system must provide a display with an effective diameter of not less than 250 millimeters (9.8 inches), (12-inch cathode ray tube).

* * * * *

■ 16. Section 80.277 is amended by revising paragraph (a)(1) to read as follows:

§ 80.277 Ship Security Alert System (SSAS).

(a) * * *

(1) Equipment that complies with RTCM 11020 (incorporated by reference, § 80.7); or

* * * * *

■ 17. The first undesignated center heading under subpart H is revised to read as follows:

Radiotelegraphy and Data

■ 18. Section 80.351 is revised to read as follows:

§ 80.351 Scope.

The following sections describe the carrier frequencies and general uses of radiotelegraphy and data transmission with respect to the following:

(a) Distress, urgency, safety, call and reply.

(b) Working.

(c) Digital selective calling (DSC).

(d) Narrow-band direct-printing (NB–DP).

(e) Facsimile.

(f) VHF–FM digital small message services (VDSMS).

■ 19. Section 80.364 is added under the undesignated center heading for Radiotelegraphy and Data to read as follows:

§ 80.364 Frequencies for VHF digital small message services (VDSMS).

Frequencies in the 156–162 MHz band may be used for VHF digital small message services (VDSMS) complying with RTCM 12301 (incorporated by reference, *see* § 80.7), except as follows

VHF–FM CHANNELS NOT AVAILABLE FOR DIGITAL SMALL MESSAGE SERVICE

Channel	Frequency (MHz)
01A	156.050
63A	156.175
05A	156.250

VHF–FM CHANNELS NOT AVAILABLE FOR DIGITAL SMALL MESSAGE SERVICE—Continued

Channel	Frequency (MHz)
65A	156.275
06	156.300
66A	156.325
67	156.375
70	156.525
12	156.600
13	156.650
73	156.675
14	156.700
74	156.725
15	156.750
75	156.775
16	156.800
76	156.825
17	156.850
77	156.875
20A	157.000
22A	157.100
AIS ½	161.975/162.025

■ 20. Section 80.1005 is revised to read as follows:

§ 80.1005 Inspection of station.

The bridge-to-bridge radiotelephone station will be inspected on vessels subject to regular inspections pursuant to the requirements of Parts II and III of Title III of the Communications Act, the Safety Convention or the Great Lakes Agreement at the time of the regular inspection. If after such inspection, the Commission determines that the Bridge-to-Bridge Act, the rules of the Commission and the station license are met, an endorsement will be made on the appropriate document. The validity of the endorsement will run concurrently with the period of the regular inspection. Each vessel must carry a certificate with a valid endorsement while subject to the Bridge-to-Bridge Act. All other bridge-to-bridge stations will be inspected from time to time. An inspection of the bridge-to-bridge station on a Great Lakes Agreement vessel must normally be made at the same time as the Great Lakes Agreement inspection is conducted by a technician holding one of the following: A General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Radiotelegraph Operator License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. Ships subject to the Bridge-to-Bridge Act may, in lieu of an endorsed certificate, certify

compliance in the station log required by section 80.409(f).

■ 21. Section 80.1053 is revised to read as follows:

§ 80.1053 Prohibition on certification, manufacture, importation, sale or use of Class A, Class B, Class S, and INMARSAT–E EPIRBs.

The manufacture, importation, sale or use of Class A, Class B, Class S, or INMARSAT–E EPIRBs is prohibited. New Class A, Class B, Class S, or INMARSAT–E EPIRBs will no longer be certified by the Commission.

■ 22. Section 80.1061 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (c) introductory text and (c)(1); and

■ c. Revising paragraphs (d) and (e).

The additions and revisions read as follows:

§ 80.1061 Special requirements for 406.0–406.1 MHz EPIRB stations.

(a) Notwithstanding the provisions in paragraph (b) of this section, 406.0–406.1 MHz EPIRBs must meet all the technical and performance standards contained in RTCM 11000 (incorporated by reference, *see* § 80.7), and must also comply with the standards specified in § 80.1101(c)(5). Beginning January 17, 2018, all new applications for certification of 406.0–406.1 MHz EPIRBs must demonstrate compliance with the requirements of RTCM 11000. 406.0–406.1 MHz EPIRBs that do not meet the requirements of RTCM 11000 shall not be manufactured, imported, or sold in the United States beginning January 17, 2020. Operation of 406.0–406.1 MHz EPIRBs that do not meet the requirements of RTCM 11000 shall be prohibited on vessels subject to 47 CFR subparts R, S, or W beginning January 17, 2023. Existing 406.0–406.1 MHz EPIRBs that do not meet the requirements of RTCM 11000 must be operated as certified.

* * * * *

(c) Prior to submitting a certification application for a 406.0–406.1 MHz radiobeacon, the radiobeacon must be certified by a test facility recognized by one of the COSPAS–SARSAT Partners that the equipment satisfies the design characteristics associated with the measurement methods incorporated in RTCM Standard 11000 (incorporated by reference, *see* § 80.7). Additionally, the radiobeacon must be subjected to the environmental and operational tests associated with the test procedures described in Appendix A of RTCM Standard 11000, by a test facility accepted by the U.S. Coast Guard for this purpose. Information regarding accepted test facilities may be obtained from Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–7126, *http://cgmix.uscg.mil/EQLabs/EQLabsSearch.aspx.*

(1) After a 406.0–406.1 MHz EPIRB has been certified by the recognized test facilities the following information must be submitted in duplicate to *typeapproval@uscg.mil* or the Commandant (CG–ENF–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–7509:

(i) The name of the manufacturer or grantee and model number of the EPIRB;

(ii) Copies of the certificate and test data obtained from the test facility recognized by a COSPAS/SARSAT Partner showing that the radiobeacon complies with the COSPAS–SARSAT design characteristics associated with the measurement methods incorporated in RTCM 11000;

(iii) Copies of the test report and test data obtained from the test facility recognized by the U.S. Coast Guard showing that the radiobeacon complies with the U.S. Coast Guard environmental and operational characteristics associated with the measurement methods described in Appendix A of the RTCM Recommended Standards; and

(iv) Instruction manuals associated with the radiobeacon, description of the test characteristics of the readiobeacon including assembly drawings, electrical schematics, description of parts list, specifications of materials and the manufacturer's quality assurance program.

* * * * *

(d) A certification application for a 406.0–406.1 MHz EPIRB must also contain a copy of the U.S. Coast Guard letter that states the radiobeacon satisfies all RTCM Recommended Standards, a copy of the technical test data, and the instruction manual(s).

(e) An identification code, recognized by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.0–406.1 MHz COSPAS/SARSAT satellite system, must be programmed in each EPIRB unit to establish a unique identification for each EPIRB station. With each marketable EPIRB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the EPIRB identification code addressed to: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684. The registration card must request the owner's name, address, telephone number, type of ship, alternate emergency contact and other information as required by NOAA. The registration card must also contain information regarding the availability to register the EPIRB at NOAA's online web-based registration database at: *http://www/beaconregistration.noaa.gov.* In addition, the following statement must be included: ''WARNING—failure to register this EPIRB with NOAA before installation could result in a monetary forfeiture being issued to the owner.''

* * * * *

■ 23. Section 80.1085 is amended by revising paragraph (a)(3) to read as follows:

§ 80.1085 Ship radio equipment—General.

* * * * *

(a) * * *

(3) A radar transponder capable of operating in the 9 GHz band or an AIS–SART, which must be stowed so that it is easily utilized (this device may be one of those required by § 80.1095(b) for a survival craft);

* * * * *

■ 24. Section 80.1095 is amended by revising paragraph (b) to read as follows:

§ 80.1095 Survival craft equipment.

* * * * *

(b) At least one radar transponder or AIS–SART (collectively, ''search and rescue locating devices'') must be carried on each side of every passenger ship and every cargo ship of 500 tons gross tonnage and upwards. At least one search and rescue locating device must be carried on every cargo ship of 300 tons gross tonnage and upwards but less than 500 tons gross tonnage. Such search and rescue locating devices must conform to performance standards as specified in § 80.233 for AIS–SARTs or § 80.1101 for radar transponders. The search and rescue locating devices must be stowed in such locations that they can be rapidly placed in any survival craft other than liferafts required on cargo ships in forward and aft areas (see Regulation III/26.1.4 of the SOLAS Convention). Alternatively, one search and rescue locating device must be stowed in each survival craft other than those required by Regulation III/26.1.4 of the SOLAS Convention. One of these search and rescue locating devices may be the search and rescue locating device required by § 80.1085(a)(3).

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 25. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302(a), 303, and 307(e).

■ 26. The heading of subpart K is revised to read as follows:

Subpart K—Personal Locator Beacons (PLBs) and Maritime Survivor Locating Devices (MSLDs)

■ 27. Section 95.1400 is revised to read as follows:

§ 95.1400 Basis and purpose.

The rules in this subpart are intended to provide individuals in the water or in remote areas a means to alert others of an emergency situation and to aid search and rescue personnel in locating those in distress.

■ 28. Section 95.1401 is revised to read as follows:

§ 95.1401 Frequency.

The frequency band 406.0–406.1 MHz is an emergency and distress frequency band available for use by Personal Locator Beacons (PLBs). Personal Locator Beacons that transmit on the frequency band 406.0–406.1 MHz must use G1D emission. Use of these frequencies must be limited to transmission of distress and safety of life communications.

■ 29. Section 95.1402 is amended by revising paragraphs (a) through (f) to read as follows:

§ 95.1402 Special requirements for 406 MHz PLBs.

(a) All 406 MHz PLBs must meet all the technical and performance standards contained in RTCM 11010.2. RTMC 11010.2, ''406 MHz Satellite Personal Locator Beacons (PLBs),'' including Amendments 1 and 2, dated June 8, 2012 is incorporated by reference in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. Copies of the document are available and may be obtained from the Radio Technical Commission for Maritime Services, 1611 N. Kent Street, Suite 605, Arlington, Virginia 22209. The document is available for inspection at Commission headquarters at 445 12th Street SW., Washington, DC 20554. Copies may also be inspected 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/code_of_federal_regulations/ibr_locations.html.*

(b) Beginning January 17, 2018, all new applications for certification of 406 MHz PLBs must demonstrate compliance with the requirements of RTCM 11010. 406 MHz PLBs that do not meet the requirements of RTCM 11010 shall not be manufactured, imported, or sold in the United States beginning January 17, 2020.

(c) Before a 406 MHz PLB certification application is submitted to the Commission, the applicant must have obtained certification from a test facility recognized by one of the COSPAS/SARSAT Partners that the PLB satisfies the standards incorporated in RTCM 11010. Additionally, an independent test must certify that the PLB complies with the electrical and environmental standards associated with the RTCM Recommended Standards.

(d) The procedures of Notification by the equipment manufacturer and Certification from the designated Telecommunications Certification Body are contained in subpart J of part 2 of this chapter.

(e) An identification code, recognized by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406 MHz COSPAS/SARSAT satellite system, must be programmed in each PLB unit to establish a unique identification for each PLB station. With each marketable PLB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the PLB identification code addressed to: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684. The registration card must request the owner's name, address, telephone number, alternate emergency contact and include the following statement: ''WARNING'' failure to register this PLB with NOAA could result in a monetary forfeiture order being issued to the owner.''

(f) To enhance protection of life and property, it is mandatory that each 406 MHz PLB be registered with NOAA and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406 MHz PLB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: ''The owner of this 406 MHz PLB must register the NOAA identification code contained on this label with the National Oceanographic and Atmospheric Administration (NOAA) whose address is: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684.'' Owners shall advise NOAA in writing upon change of PLB ownership, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards. In the alternative to registration by postcard, users may register 406 MHz PLBs online at *www.beaconregistration.noaa.gov.*

* * * * *

■ 30. Section 95.1403 is added to subpart K to read as follows:

§ 95.1403 Special requirements for Maritime Survivor Locating Devices.

(a) Maritime Survivor Locating Devices (MSLDs) are devices intended to aid in the location of persons in the water. Use on land is not authorized.

(b) MSLDs must meet all the technical and performance standards contained in RTCM 11901.1. RTCM 11901.1, ''Maritime Survivor Locating Devices (MSLD),'' dated June 4, 2012 is incorporated by reference in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. Copies of the document are available and may be obtained from the Radio Technical Commission for Maritime Services, 1611 N. Kent Street, Suite 605, Arlington, Virginia 22209. The document is available for inspection at Commission headquarters at 445 12th Street SW., Washington, DC 20554. Copies may also be inspected 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/code_of_federal_regulations/ibr_locations.html.*

(c) No device may be marketed or sold in the United States as a ''MSLD'' or ''Maritime Survivor Locating Device'' unless it complies with the requirements of RTCM 11901. Previously approved devices intended to aid in the location of persons in the water that do not meet the requirements of this section shall not be manufactured, imported, or sold in the United States January 17, 2018.

(d) All MSLDs must:

(1) Transmit on at least one of the following frequencies: 121.5 MHz, 156.525 MHz, 156.750 MHz, 156.800 MHz, 156.850 MHz, 161.975 MHz, 162.025 MHz; or

(2) Include a function intended to send a distress message directly to the U.S. Coast Guard or any other search and rescue organization.

(e) Before an MSLD certification application is submitted, the applicant must obtain a test report from a test laboratory which shows that the MSLD complies with the electrical and environmental standards associated with RTCM 11901. The test laboratory must be accredited to ISO/IEC 17025 with a scope covering the applicable requirements and test procedures.

(1) After the MSLD has been certified by a test laboratory, the following

information must be submitted in duplicate to the U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7126, Washington, DC 20593–7126:

(i) The name of the manufacturer or grantee and model number of the MSLD;

(ii) Copies of the test report and test data showing that the MSLD complies with the electrical and environmental standards associated with RTCM 11901; and

(iii) Instruction manuals associated with the MSLD, description of the test characteristics of the MSLD including assembly drawings, electrical schematics, description of parts list, specifications of materials and the manufacturer's quality assurance program.

(2) After reviewing the information described in paragraph (e)(1) of this section, the U.S. Coast Guard will issue a letter stating whether the MSLD satisfies all RTCM Recommended Standards. In the case of an MSLD that includes a function intended to send a distress message directly to the U.S. Coast Guard or any other search and rescue organization, the letter will also state whether the U.S. Coast Guard endorses that function.

(f) A certification application for an MSLD must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all RTCM Recommended Standards, a copy of the technical test data, and the instruction manual(s).

[FR Doc. 2016–29612 Filed 12–14–16; 8:45 am]

BILLING CODE 6712–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Parts 1001 and 1002

[Docket No. EP 737]

Revised Inspection of Records and Related Fees

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board or STB) is revising its regulations governing ''Inspection of Records'' and ''Fees'' in accordance with changes to the Freedom of Information Act (FOIA) made by the FOIA Improvement Act of 2016 (FOIA Improvement Act). Pursuant to the FOIA Improvement Act, the Board is extending the deadline for administrative appeals, adding information on dispute resolution services, and amending the way fees are charged in certain circumstances.

DATES: These rules are effective on January 14, 2017.

ADDRESSES: Information or questions regarding these final rules should reference Docket No. EP 737 and be in writing addressed to: FOIA Officer, Office of the General Counsel, Surface Transportation Board, by mail at 395 E Street SW., Washington, DC 20423–0001, by facsimile at 202–245–0456, or by Email at *FOIA.Privacy@stb.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board is revising its regulations at 49 CFR 1001.3 and 1002.1(g) in accordance with the FOIA Improvement Act, Public Law 114–185 (2016), which provides additional protections for parties requesting records held by the executive branch of the U.S. Government. Among the changes to FOIA, the FOIA Improvement Act requires agencies to allow requesters a minimum of 90 days to file an administrative appeal and that agencies allow for dispute resolution services at various times throughout the FOIA process. The FOIA Improvement Act also updates how fees are assessed in certain circumstances.

In accordance with the FOIA Improvement Act, the Board is revising 1001.3 by: (1) Changing the appeal deadline from 30 days to 90 days; and (2) adding a provision (under a new subheading) informing parties that they may seek dispute resolution services from either the Board's FOIA Public Liaison or the Office of Government Information Services, National Archives and Records Administration. The Board is also revising 49 CFR 1002.1(g) by adding paragraphs (15), (16), (17), and (18) to include the new requirements mandated by the FOIA Improvement Act regarding fees. The final rules are set forth below.

Under the Administrative Procedure Act (APA), the public generally may participate in the promulgation of rules through a notice and comment period. 5 U.S.C. 553(b) & (c). However, an agency may publish regulations in final form when the agency, for good cause, finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

The Board has determined that these amendments to its regulations relate to agency management, practice, and procedure, and make technical changes only as directed by statute, are not a matter of agency discretion, and provide additional protections to the public. Therefore, the Board finds that notice and public comment on these amendments are unnecessary. *See* 5 U.S.C. 553(a)(2), 553(b)(A) & 553(b)(B).

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

List of Subjects

49 CFR Part 1001

Freedom of information, Government employees, Inspection of records.

49 CFR Part 1002

Freedom of information, Fees for records.

It is ordered:

1. The final rules set forth below are adopted. Notice of the rules adopted here will be published in the **Federal Register**.

2. The rules are effective on January 14, 2017.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Brendetta S. Jones,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1001 and part 1002 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1001—INSPECTION OF RECORDS

■ 1. Revise the authority citation for part 1001 to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 1302, and 49 U.S.C. 1321.

■ 2. Revise § 1001.3 to read as follows:

§ 1001.3 Requests to inspect other records not considered public under 5 U.S.C. 552.

(a) *Request and determination.* Requests to inspect records other than those now deemed to be of a public nature shall be in writing and addressed to the Freedom of Information Act Officer (FOIA Officer). The FOIA Officer shall determine within 20 days of receipt of a request (excepting Saturdays, Sundays, and legal public holidays) whether a requested record will be made available. If the FOIA Officer determines that a request cannot

be honored, the FOIA Officer must inform the requesting party in writing of this decision and such letter shall contain a detailed explanation of why the requested material cannot be made available and explain the requesting party's right of appeal.

(b) *Appeal.* If the FOIA Officer rules that such records cannot be made available because they are exempt under the provisions of 5 U.S.C. 552(b), an appeal from such ruling may be addressed to the Chairman. The Chairman's decision shall be administratively final and shall state the specific exemption(s) contained in 5 U.S.C. 552(b) relied upon for any denial. Such an appeal must be filed within 90 days of the date of the FOIA Officer's letter. The Chairman shall act in writing on such appeals within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of any appeal. In unusual circumstances, as set forth in 5 U.S.C. 552(a)(6)(B), the time limit may be extended, by written notice to the person making the particular request, setting forth the reasons for such extension, for no more than 10 working days. If the appeal is denied, the Chairman's order shall notify the requesting party of his or her right to judicial review. Charges shall be made as provided for in 49 CFR 1002.1.

(c) *Alternative dispute resolution services.* Requesters may seek dispute resolution services from:

(1) The Board's FOIA Public Liaison by Email at *FOIA.Privacy@stb.gov* or by mail, telephone, or facsimile as provided on the Board's Web site located at *https://www.stb.gov/stb/foia.html;* or

(2) The Office of Government Information Services (OGIS) by mail to Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland, 20740–6001, by facsimile at (202) 741–5769, or by Email at *ogis@nara.gov.*

PART 1002—FEES

■ 3. Revise the authority citation for part 1002 to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(g)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 4. Amend § 1002.1 by adding paragraphs (g)(15), (16), (17) and (18) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(g) * * *

(15) No fees will be assessed if the FOIA Officer fails to comply with any time limit under the FOIA or these regulations, and has not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely, written notice is given to the requester, the failure to meet the time limit may be excused an additional 10 working days before fees are automatically waived under this paragraph (g)(15).

(16) If the FOIA Officer determines that unusual circumstances apply and more than 5,000 pages are necessary to respond to a request, fees may be charged if timely, written notice to the requester is provided and discussed with the requester via mail, Email, or telephone (or if at least three good-faith attempts are made to do so) regarding how the requester could effectively limit the scope of the request.

(17) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

(18) Fees may not be avoided by filing multiple requests at the same time. When the FOIA Officer reasonably believes that a requester, alone or with others, is breaking down one request into a series of requests to avoid fees, the requests will be combined, and the requester or requesters will be charged accordingly.

* * * * *

[FR Doc. 2016–30183 Filed 12–14–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 141107936–5399–02]

RIN 0648–XF081

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2016 Commercial Accountability Measure and Closure for South Atlantic Gray Triggerfish; July through December Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures for commercial gray triggerfish in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial landings for gray triggerfish will reach the commercial annual catch limit (ACL) (commercial quota) for the period July through December by December 16, 2016. Therefore, NMFS is closing the commercial sector for gray triggerfish in the South Atlantic EEZ on December 16, 2016. This closure is necessary to protect the gray triggerfish resource.

DATES: This rule is effective 12:01 a.m., local time, December 16, 2016, until January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes gray triggerfish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 29 to the FMP divided the commercial ACL (commercial quota) for gray triggerfish in the South Atlantic into two 6-month commercial fishing seasons and allocated 50 percent of the total commercial quota of 312,324 lb (141,668 kg), round weight, to each fishing season, January 1 through June 30, and July 1 through December 31 (80 FR 30947, June 1, 2015), as specified in 50 CFR 622.190(a)(8). As a result, the commercial quota is divided into two equal seasonal quotas of 156,162 lb (70,834 kg), round weight.

The commercial sector for gray triggerfish closed on April 2, 2016, as landing reports indicated the January through June commercial quota would be met by that date. However, as of May 5, 2016, only 83 percent of the commercial quota was caught, and NMFS subsequently reopened the January through June commercial fishing season on June 13, 2016. The 2016 July through December quota includes 16,016 lb (7265 kg), round weight, that was not harvested during the January through June fishing season. As set forth in 50 CFR 622.190(a)(8)(iii), the unused portion of the January through June quota was added to the July through December quota, for a seasonal quota of 172,178 lb (78,099 kg), round weight.

Under 50 CFR 622.193(q)(1)(i), NMFS is required to close the commercial sector for gray triggerfish when the commercial quota specified in § 622.190(a)(8)(i) or (ii) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic gray triggerfish will be reached by December 16, 2016. Accordingly, the commercial sector for South Atlantic gray triggerfish is closed effective 12:01 a.m., local time, December 16, 2016, until the start of the next commercial fishing season on January 1, 2017.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having gray triggerfish onboard must have landed and bartered, traded, or sold such gray triggerfish prior to 12:01 a.m., local time, December 16, 2016. During the closure, the bag limit specified in 50 CFR 622.187(b)(8), and the possession limits specified in 50 CFR 622.187(c), apply to all harvest or possession of gray triggerfish in or from the South Atlantic EEZ. Also, during the closure, the sale or purchase of gray triggerfish taken from the South Atlantic EEZ is prohibited. The prohibition on the sale or purchase does not apply to gray triggerfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 16, 2016, and were held in cold storage by a dealer or processor.

For a person onboard a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limits and sale and purchase prohibitions applicable after the commercial quota closure for gray triggerfish apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.193(q)(1)(i).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of gray triggerfish and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(q)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The NOAA Assistant Administrator for Fisheries (AA), finds that the need to immediately implement this action to close the commercial sector for gray triggerfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing Amendment 29, which established the split commercial seasons with split quota for gray triggerfish, and the accountability measures have already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect gray triggerfish since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 12, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–30137 Filed 12–12–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 241
Thursday, December 15, 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.

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2016–8]

Group Registration of Contributions to Periodicals

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The United States Copyright Office is extending the deadline for the submission of written comments in response to its December 1, 2016 Notice of Proposed Rulemaking regarding group registration of contributions to periodicals.

DATES: Written comments are now due no later than 11:59 p.m. Eastern Time on January 30, 2017.

ADDRESSES: The Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/rulemaking/grcp/.* If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice. Each can be reached by telephone at 202–707–8040.

SUPPLEMENTARY INFORMATION: The United States Copyright Office is proposing to amend the regulation governing the group registration option for contributions to periodicals to reflect certain upgrades that will soon be made to the electronic registration system. On December 1, 2016, the Office issued a Notice of Proposed Rulemaking seeking public input on that topic. *See* 81 FR 86634 (Dec. 1, 2016). To ensure that commenters have sufficient time to respond, the Office is extending the deadline for the submission of comments in response to the Notice to January 30, 2017, at 11:59 p.m. Eastern Time.

Dated: December 9, 2016.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2016–30077 Filed 12–14–16; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202

[Docket No. 2016–10]

Group Registration of Photographs

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The United States Copyright Office is extending the deadline for the submission of written comments in response to its December 1, 2016 Notice of Proposed Rulemaking regarding group registration of photographs.

DATES: Written comments are now due no later than 11:59 p.m. Eastern Time on January 30, 2017.

ADDRESSES: The Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/rulemaking/supplementary-registration/.* If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice. Each can be reached by telephone at 202–707–8040.

SUPPLEMENTARY INFORMATION: The United States Copyright Office is proposing to update its regulations governing group registration options for photographers to encourage broader participation in the registration system, increase the efficiency of the registration process, and create a more robust record of the claim. On December 1, 2016, the Office issued a Notice of Proposed Rulemaking seeking public input on this proposal. *See* 81 FR 86643 (Dec. 1, 2016). To ensure that commenters have sufficient time to respond, the Office is extending the deadline for the submission of comments in response to the Notice to January 30, 2017, at 11:59 p.m. Eastern Time.

Dated: December 9, 2016.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2016–30071 Filed 12–14–16; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202

[Docket No. 2016–9]

Supplementary Registration

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The United States Copyright Office is extending the deadline for the submission of written comments in response to its December 1, 2016 Notice of Proposed Rulemaking regarding supplementary registration.

DATES: Written comments are now due no later than 11:59 p.m. Eastern Time on January 30, 2017.

ADDRESSES: The Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/rulemaking/supplementary-registration/.* If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice. Each can be reached by telephone at 202–707–8040.

SUPPLEMENTARY INFORMATION: The United States Copyright Office is proposing to update the regulation governing supplementary registration to reflect certain technical upgrades that will soon be made to the electronic registration system. On December 1, 2016, the Office issued a Notice of Proposed Rulemaking seeking public input on that topic. *See* 81 FR 86656 (Dec. 1, 2016). To ensure that commenters have sufficient time to respond, the Office is extending the deadline for the submission of comments in response to the Notice to January 30, 2017, at 11:59 p.m. Eastern Time.

Dated: December 9, 2016.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2016–30076 Filed 12–14–16; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0524; FRL–9956–68–Region 9]

Partial Approval, Partial Disapproval of California Air Plan Revisions, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a partial approval and partial disapproval of revisions to the Antelope Valley Air Quality Management District (AVAQMD or District) portion of the California State Implementation Plan (SIP). These revisions concern the District's demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 1997 and 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). We are proposing action on local SIP revisions under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 17, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0524 at *http://www.regulations.gov,* or via email to Andrew Steckel, Rulemaking Office Chief at *Steckel.Andrew@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal
A. What documents did the State submit?
B. Are there other versions of these documents?
C. What is the purpose of the RACT SIP submissions?
II. The EPA's Evaluation and Proposed Action
A. How is the EPA evaluating the RACT SIP submissions?
B. Do the RACT SIP submissions meet the evaluation criteria?
C. What are the RACT deficiencies?
D. EPA Recommendations To Further Improve the RACT SIPs
E. Proposed Action and Public Comment
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What documents did the State submit?

Table 1 lists the documents addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED DOCUMENTS

Local agency	Document	Adopted	Submitted
AVAQMD	AVAQMD 8-Hour Reasonably Available Control Technology—State Implementation Plan Analysis (RACT SIP Analysis)—1997 8-hour Ozone NAAQS ''2006 RACT SIP''.	09/19/06	01/31/07
AVAQMD	AVAQMD 8-Hour Reasonably Available Control Technology—State Implementation Plan Analysis (2015 RACT SIP Analysis)—2008 8-hour Ozone NAAQS ''2015 RACT SIP''.	07/21/15	10/23/15

On July 31, 2007, the submittal for AVAQMD's 2006 RACT SIP Analysis for the 1997 8-hour ozone NAAQS was deemed by operation of law to meet the completeness criteria in Title 40 of the Code of Federal Regulations (CFR) part 51 Appendix V, which must be met before formal EPA review.

On March 9, 2016, the submittal for AVAQMD's 2015 RACT SIP Analysis for the 2008 8-hour ozone NAAQS was found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these documents?

There are no previous versions of these documents in the AVAQMD portion of the California SIP for the 1997 or 2008 8-hour ozone standard.

C. What is the purpose of the RACT SIP submissions?

Volatile Organic Compounds (VOCs) and nitrogen oxides (NO_X) help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA

requires states to submit regulations that control VOC and NO_X emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as moderate or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or NO_X. The AVAQMD is subject to this requirement as it is designated and classified as a severe-15 ozone nonattainment area for the 1997 8-hour ozone NAAQS.[1] Therefore, the AVAQMD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or NO_X within the nonattainment area. Any stationary source that emits or has the potential to emit at least 100 tons per year of VOCs or NO_X is a major stationary source in a moderate ozone nonattainment area (CAA section 182(b)(2), (f) and 302(j)), and any stationary source that emits or has the potential to emit at least 25 tons per year of VOCs or NO_X is a major stationary source in a severe ozone nonattainment area (CAA sections 182(d) and (f)).

Section IV.G. of the preamble to the EPA's final rule to implement the 1997 8-hour ozone NAAQS (70 FR 71612, November 29, 2005) discusses RACT requirements. It states in part that where a RACT SIP is required, states implementing the 8-hour standard generally must assure that RACT is met either through a certification that previously required RACT controls represent RACT for 8-hour implementation purposes or through a new RACT determination. Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS (80 FR 12264, March 6, 2015) discusses similar requirements for RACT. The submitted documents provide AVAQMD's analyses of its compliance with the CAA section 182 RACT requirements for the 1997 and 2008 8-hour ozone NAAQS. The EPA's technical support documents (TSD) have more information about the District's submissions and the EPA's evaluations thereof.

[1] 40 CFR 81.305; 69 FR 23858 at 23884 (April 30, 2004) (final rule designating and classifying Antelope Valley as a Subpart 2/moderate nonattainment for the 1997 8-hour ozone NAAQS); 77 FR 26950 (May 8, 2012) (final rule reclassifying Antelope Valley as severe-15 nonattainment for the 1997 8-hour ozone NAAQS); and 77 FR 30088 at 30100 (May 21, 2012) (final rule designating and classifying Antelope Valley as severe-15 nonattainment for the 2008 8-hour ozone NAAQS). Antelope Valley AQMD is listed in the final rulemaking under ''Los Angeles-San Bernardino Cos (W Mojave Desert), CA: Los Angeles County (part)''.

II. The EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the RACT SIP submissions?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). Generally, SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs or NO_X in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)). The AVAQMD regulates a severe ozone nonattainment area (see 40 CFR 81.305), so the District's rules must implement RACT.

Guidance and policy documents that we use to evaluate enforceability, rule stringency requirements and CAA section 182 RACT requirements for the applicable criteria pollutants include the following:

1. ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2'' (70 FR 71612; November 29, 2005).
2. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
3. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
4. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
5. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
6. Memorandum from William T. Harnett to Regional Air Division Directors, (May 18, 2006), ''RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers''.
7. RACT SIPs, Letter dated March 9, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) describing Region IX's understanding of what constitutes a minimally acceptable RACT SIP.
8. RACT SIPs, Letter dated April 4, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) listing EPA's current CTGs, ACTs, and other documents which may help to establish RACT.
9. ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (80 FR 12264; March 6, 2015).

With respect to major stationary sources, because the Antelope Valley ozone nonattainment area was classified as ''moderate'' nonattainment for the 1997 8-hour ozone NAAQS at the time that California submitted the 2006 RACT SIP to the EPA, the EPA evaluated this submission in accordance with the 100 ton per year (tpy) threshold for ''major stationary sources'' of VOC or NO_X emissions in moderate ozone nonattainment areas. (see CAA sections 182(b)(2) and (f)).

The AVAQMD's 2015 RACT SIP submittal contains the District's RACT evaluation for major stationary sources in accordance with the 25 tpy threshold for major stationary sources of VOC or NO_X emissions in severe ozone nonattainment areas. (see CAA sections 182(d) and (f)). The EPA also evaluated AVAQMD's submittals for compliance with the additional RACT requirements that became applicable following the EPA's reclassification of the Antelope Valley ozone nonattainment area from ''moderate'' to ''severe'' nonattainment for the 1997 8-hour ozone NAAQS and classification as a severe ozone nonattainment area for the 2008 8-hour ozone NAAQS.

B. Do the RACT SIP submissions meet the evaluation criteria?

With respect to the 1997 8-hour ozone standard, AVAQMD's 2006 RACT SIP and its 2014 Supplemental Analysis [2] provide the District's conclusion that the applicable SIP generally satisfies CAA section 182 RACT requirements except for a limited number of rules that did not fully implement an applicable CTG or where rules covering major non-CTG sources must be updated to implement RACT. AVAQMD reviewed the list of CTGs and identified whether or not there was a stationary source located within its jurisdiction. For some categories, AVAQMD determined its rules met RACT, while in other cases it concluded that several rules must be updated to implement RACT.[3] With respect to major non-CTG sources, the District identified all facilities that have submitted applications for a CAA title V Federal Operating Permit. Table 1 of the 2006 RACT SIP lists four major sources, two of which are landfills (Antelope Valley Public Landfill and Lancaster Landfill), which the District states are

[2] AVAQMD separately provided a supplemental analysis titled, ''8-Hour Ozone Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Analysis—Supplemental Analysis'', dated March 13, 2014, to address the EPA's September 11, 2006 comments on the 2006 RACT SIP [hereinafter ''2014 Supplemental Analysis''].

[3] See AVAQMD 2014 Supplemental Analysis.

not a major source of ozone precursors. The District also states that VOC emissions from the remaining two title V facilities (Northrup-Grumman and Lockheed Martin) are largely regulated by Rule 1124 Aerospace Operations, which was recently amended and approved into the SIP.[4] Our review of CARB's emissions inventory database for potential CTG sources did not uncover any CTG source categories or major sources missing from the District's analysis.

With respect to the 2008 8-hour ozone standard, AVAQMD's 2015 RACT SIP staff report states that ''[t]he original *2006 RACT SIP Analysis* (for the 1997 8-hour ozone standard), together with the supplemental March 13, 2014 *RACT SIP Analysis* and this document, [the 2015 RACT SIP Analysis] represent a current and complete RACT SIP Analysis document to satisfy the District's RACT obligation for the 1997 and 2008 8-hour ozone standards.'' [5]

For each CTG source category, AVAQMD's 2015 RACT SIP identifies if it has a stationary source subject to the CTG. AVAQMD states that for some CTG source categories its rules meet RACT, while in other cases, the rules need to be updated to implement RACT. With respect to major non-CTG sources, the District identified five facilities that submitted applications for title V Federal Operating Permits. Four of these facilities were previously identified in the District's 2006 RACT SIP. One new facility, Wm Bolthouse Farms, is a major source of NO_X due to emissions from internal combustion engines used to support agricultural operations.

We reviewed AVAQMD's 2006 RACT SIP, its 2014 Supplemental Analysis, and its 2015 RACT SIPs to determine if the District's rules implemented current RACT. We also reviewed CARB's emissions inventory database and did not uncover any additional major stationary sources that were missing in the District's analyses. The District's efforts to identify CTG sources and major sources appears to be thorough. Based on the EPA's review of the District's evaluations, we propose to conclude that with the exception of the following rules, all of the identified SIP rules implement RACT for the applicable CTG categories and for the major non-CTG stationary sources of VOC and NO_X for the 1997 and 2008 8-hour ozone NAAQS. We will discuss the rules' deficiencies in the next section. The rules that are deficient are:

1. Rule 462, Organic Liquid Loading (6/9/95).

2. Rule 1110.2, Emissions from Stationary, Non-road & Portable Internal Combustion Engines (1/21/03).

3. Rule 1151, Motor Vehicle and Mobile Equipment Coating Operations (6/19/12).

4. Rule 1171, Solvent Cleaning Operations (11/17/98).

Where there are no existing sources covered by a particular CTG document, states may, in lieu of adopting RACT requirements for those sources, adopt negative declarations certifying that there are no such sources in the relevant nonattainment area. Tables 2 of AVAQMD's 2006 and 2015 RACT SIPs lists the District's negative declarations where it had no sources subject to the applicable CTG for the 1997 and 2008 8-hour ozone standards respectively. The District based its conclusion on a review of permit files, emissions inventory data, and a search of the internet and yellow pages. We summarized the District's negative declarations in Table 2 below.

TABLE 2—AVAQMD NEGATIVE DECLARATIONS FOR THE 1997 AND 2008 8-HOUR OZONE NAAQS

CTG source category	Negative declaration CTG reference document	2006 RACT SIP *	2015 RACT SIP
Coils	EPA–450/2–77–008, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks.	.....	X
Flat Wood Paneling Coatings	EPA–453/R–06–004, Control Techniques Guidelines for Flat Wood Paneling Coatings.	.....	X
Fiberglass Board Manufacturing Materials.	EPA 453/R–08–004, Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials.	.....	X
Gasoline Bulk Plants	EPA–450/2–77–035, Control of Volatile Organic Emissions from Bulk Gasoline Plants.	X	X
Gasoline Loading Terminals >76,000 L.	EPA–450/2–77–026, Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals.	X	.....
Large Appliances, Surface Coatings ..	EPA–450/2–77–034, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances.	X	X
Large Appliances, Surface Coatings ..	EPA 453/R–07–004, Control Techniques Guidelines for Large Appliance Coatings.	.....	X
Dry Cleaning	EPA–450/3–82–009, Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.	.....	X
Magnet Wire Coating	EPA–450/2–77–033, Control of Volatile Organic Emissions from Existing Stationary Sources, Volume IV: Surface Coating of Insulation of Magnet Wire.	X	X
Metal Furniture	EPA 453/R–07–005, Control Techniques Guidelines for Metal Furniture Coatings.	.....	X
Natural Gas/Gasoline Processing Plants.	EPA–450/2–83–007, Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants.	X	X
Petroleum Liquid Storage Tanks—Fixed Roof Tanks.	EPA–450/2–77–036, Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks.	X	X
Petroleum Liquid Storage Tanks—External Floating Roof Tanks.	EPA–450/2–78–047, Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks.	X	X
Pharmaceutical Products	EPA–450/2–78–029, Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.	X	X
Refineries	EPA–450/2–77–025, Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.	X	X

[4] Rule 1124, Aerospace Assembly and Component Manufacturing Operations, amended August 20, 2013, was approved into the SIP as meeting RACT in 80 FR 60040 (October 5, 2015).

[5] See AVAQMD 2015 RACT SIP, pg 1.

TABLE 2—AVAQMD NEGATIVE DECLARATIONS FOR THE 1997 AND 2008 8-HOUR OZONE NAAQS—Continued

CTG source category	Negative declaration CTG reference document	2006 RACT SIP *	2015 RACT SIP
Refineries	EPA–450/2–78–036, Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.	X	X
Resin Manufacturing—High-Density Polyethylene, Polypropylene, and Polystyrene Resins.	EPA–450/3–83–008, Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.	X	X
Resin Manufacturing—Synthetic Organic Chemical Polymers and Resin Manufacturing.	EPA–450/3–83–006, Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.	X	X
Rubber Tire Manufacturing	EPA–450/2–78–030, Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.	X	X
Ship Coatings	61 FR 44050 and EPA–453/R–94–032, Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating).	X	X
Synthetic Organic Chemical Manufacturing.	EPA–450/3–84–015, Control of Volatile Organic Compound Emissions from Air Oxidation Process in Synthetic Organic Chemical Manufacturing Industry (SOCMI).	X	X
Synthetic Organic Chemical Manufacturing.	EPA–450/4–91–031, Control of Volatile Organic Compound Emissions from Reactor Process and Distillation Operations in SOCMI.	X	X
Wood Furniture Surface Coating	EPA–453/R–96–007, Control of VOC Emissions from Wood Furniture Manufacturing Operations.	X	X

* These Negative Declarations were approved on July 1, 2011 (76 FR 38572).

Our review of AVAQMD's negative declarations indicate some CTGs missing from the District's analysis. The District should adopt negative declarations for the following CTGs for the 1997 8-hour ozone standard if it concludes it has no sources covered by the CTGs:

1. EPA–450/2–78–032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling.
2. EPA–450/3–82–009, Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.
3. EPA–450/2–77–008, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, can coating portion.

The District should also adopt negative declarations for the following CTGs for the 2008 8-hour ozone standard if it concludes it has no sources covered by these documents:

1. EPA–450/2–77–008, Can coating portion of Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks
2. EPA–450/2–77–026, Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals.
3. EPA–450/7–77–032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture.
4. EPA–450/2–78–032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling.
5. EPA–453/R–08–003, Drum coating portion of Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings.
6. EPA 453/R–08–003, Pleasure craft coating portion of Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings.

Our 2006 and 2015 RACT SIP TSDs provide a more detailed discussion of the EPA's rationale, including an overview of the District's analyses, which were made available for public comment during the District's rulemaking process.

C. What are the RACT deficiencies?

Rule 462, Organic Liquid Loading, (amended 6/9/95) defines ''facility vapor leak'' as ''measured at a distance of 2 centimeters from the source according to EPA Method 21.'' This should be corrected to remove the 2 centimeter criteria to be consistent with EPA Method 21.

Rule 1110.2, Emissions from Stationary, Non-road & Portable Internal Combustion Engines, (amended 1/21/03) exempts engines ''used directly and exclusively by the owner/operator for agricultural operations necessary for the growing of crops or raising of fowl or animals.'' The District should update this rule to eliminate the exemption for agricultural engines or adopt a separate rule for agricultural engines.

Rule 1151, Motor Vehicle and Mobile Equipment Coating Operations (amended 6/19/12) does not cover the coating of new heavier duty vehicles. The District's RACT SIP states it has a new heavier duty vehicle manufacturing facility whose permitted coating operation exceeds the applicability threshold for the 2008 CTG for Automobile and Light Duty Truck Assembly Coatings.

Rule 1171, Solvent Cleaning Operations (amended 11/17/98) needs to incorporate work practices from the 2006 CTG for Industrial Cleaning Solvents.

D. EPA Recommendations To Further Improve the RACT SIPs

The 2015 TSD describes recommendations if additional emission reductions are needed for the next time the local agency modifies its rules. The 2006 and 2015 TSDs also recommend adopting additional negative declarations if the District concludes it has no sources covered by those CTG categories.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, and explained more fully in our TSDs, the EPA proposes to partially approve and partially disapprove the 2006 and 2015 RACT SIP submittals. We will accept comments from the public on this proposal until January 17, 2017.

If finalized, this partial disapproval would trigger the 2-year clock for the federal implementation plan (FIP) requirement under section 110(c).

In addition, final disapproval would trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the RACT SIP deficiencies within 18 months of the effective date of the final action.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be

found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 2, 2016.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–30179 Filed 12–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2016–0552; FRL–9956–50–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Maine, New Hampshire, Rhode Island and Vermont; Interstate Transport of Fine Particle and Ozone Air Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) submissions from the Maine Department of Environmental Protection (ME DEP), the New Hampshire Department of Environmental Services (NH DES), the Rhode Island Department of Environmental Management (RI DEM) and the Vermont Department of Environmental Conservation (VT DEC). These SIP submissions address provisions of the Clean Air Act that require each state to submit a SIP to address emissions that may adversely affect another state's air quality through interstate transport. The EPA is proposing that all four States have adequate provisions to prohibit in-state emissions activities from significantly contributing to nonattainment, or interfering with the maintenance, of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states, and that Rhode Island and Vermont have adequate provisions to prohibit in-state emissions activities from significantly contributing to nonattainment, or interfering with maintenance, of the 1997 fine particulate matter ($PM_{2.5}$) and 2006 $PM_{2.5}$ NAAQS in other states. The intended effect of this action is to propose approval of the SIP revisions submitted by Maine, New Hampshire, Rhode Island, and Vermont. This action is being taken under the Clean Air Act.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Submit your comments, identified by docket identification number EPA–R01–OAR–2016–0552, at *http://www.regulations.gov,* or via email to *Arnold.Anne@EPA.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Publicly available docket materials are available either electronically in *www.regulations.gov* or at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1664; *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What should I consider as I prepare my comments for EPA?
II. Rulemaking Information
III. Proposed Action
IV. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. Rulemaking Information

EPA is proposing to approve SIP submissions from the ME DEP, the NH DES, the RI DEM and the VT DEC. The SIPs were submitted on the following dates: April 24, 2008 (ME); March 11, 2008 (NH); April 30, 2008 and November 6, 2009 (RI); and April 15, 2009 and May 21, 2010 (VT). These SIP submissions address the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) for the 1997 ozone and 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS.[1] EPA previously approved SIP submissions from New Hampshire and Maine as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS (see 77 FR 63228).

On July 18, 1997, EPA established a new 8-hour NAAQS for ozone of 0.08 parts per million (ppm) (62 FR 38856). On March 12, 2008, EPA published a revision to the 8-hour ozone standard, lowering the level from 0.08 ppm to 0.075 ppm. In addition, on July 18, 1997, EPA also revised the NAAQS for particulate matter to add new annual and 24-hour standards for fine particles, using $PM_{2.5}$ as the indicator (62 FR 38652). These revisions established an annual standard of 15 $\mu g/m^3$ and a 24-hour standard of 65 $\mu g/m^3$. During 2006, EPA revised the air quality standards for $PM_{2.5}$. The 2006 standards decreased the level of the 24-hour fine particle standard from 65 $\mu g/m^3$ to 35 $\mu g/m^3$, and retained the annual fine particle standard at 15 $\mu g/m^3$.[2]

The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable ''infrastructure'' elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain ''good neighbor'' provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements, or ''prongs,'' within CAA section 110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I), often referred to as ''prong one'' and ''prong two.'' These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' (prong 1) or ''interfere with maintenance'' (prong 2) of the applicable air quality standard in any other state.

We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the eastern portion of the United States in several past regulatory actions.[3] We most recently promulgated the Cross-State Air Pollution Rule (CSAPR), which addressed CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States.[4] CSAPR addressed multiple national ambient air quality standards, but did not address the 2008 8-hour ozone standard.[5] On December 3, 2015, the EPA proposed an update to CSAPR to address the 2008 ozone standard, referred to as the CSAPR Update.[6] On October 26, 2016, the final CSAPR Update was published (see 81 FR 74504).

In addition, EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section 110(a)(2)(D)(i).[7] This guidance

[1] To the extent that these SIP submittals address other infrastructure elements, such as CAA section 110(a)(2)(D)(i)(II), those requirements are not being addressed in today's action. In today's rulemaking, EPA is proposing action only with respect to CAA section 110(a)(2)(D)(i)(I).

[2] In addition, EPA subsequently revised the annual fine particle NAAQS to a level of 12 $\mu g/m^3$ (78 FR 3086; January 15, 2013) and the ozone NAAQS to a level of 0.070 ppm (80 FR 65292; October 26, 2015). These NAAQS updates are not, however, relevant to today's action.

[3] NO_X SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011).

[4] 76 FR 48208.

[5] CSAPR addressed the 1997 8-hour ozone, and the 1997 and 2006 fine particulate matter NAAQS.

[6] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 80 FR 75706 (December 3, 2015).

[7] ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' Memorandum from William T.

Continued

indicated that states excluded from the Clean Air Interstate Rule (CAIR) ''should be able to make a relatively simple SIP submission verifying that the State does not significantly contribute to nonattainment or interfere with maintenance of the [1997] 8-hour ozone or $PM_{2.5}$ standards in another state.'' EPA promulgated CAIR in 2005 (see 70 FR 25172, May 12, 2005). The CAIR modeling showed that none of the four states that are the subject of this proposed action (Maine, New Hampshire, Rhode Island, and Vermont) were linked to identified downwind nonattainment receptors, for either the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ or the 1997 ozone NAAQS, and therefore were not considered to significantly contribute to nonattainment or interfere with maintenance of the standards in those downwind areas. In accordance with the above guidance, each of the four states' SIP submissions use the CAIR modeling results as the basis for showing that their State does not contribute significantly to downwind nonattainment, or interfere with maintenance, of the 1997 ozone or the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS.

CAIR was subject to litigation and ultimately remanded to the EPA by the D.C. Circuit.[8] Among other things, the court held that EPA had failed to give ''independent significance'' to the interfere with maintenance prong of CAA section 110(a)(2)(D)(i)(I) by separately identifying downwind areas that might be projected to attain the NAAQS, but that might struggle to maintain the standard due to emissions from upwind states.[9] The court concluded that ''EPA must redo its analysis from the ground up.'' [10]

CAIR was subsequently replaced by CSAPR. Although the states do not cite CSAPR or the CSAPR Update in their SIP submissions (as these SIP submissions pre-date CSAPR), the CSAPR modeling is helpful to EPA in our review in that it bolsters the case these four states have given EPA in their SIP submissions showing that they do not cause or contribute significantly to downwind nonattainment or maintenance for either the 1997 ozone or 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS.

In the CSAPR rulemaking, the EPA used detailed air quality analyses to first identify downwind nonattainment and maintenance receptors, and to then determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered ''linked'' to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to nonattainment, or interfere with maintenance, of the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary.

In CSAPR, the EPA proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate.[11] The EPA evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, the EPA compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. The EPA's analysis showed that the one-percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded.[12] In addition, the EPA determined that it was important to use a relatively lower one-percent threshold because there are adverse health impacts associated with ambient ozone even at low levels.[13] The EPA also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. The EPA determined that a ''0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors — an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable.'' [14]

In the final CSAPR, the EPA determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and the EPA's previous use of a one-percent threshold in CAIR. The EPA used a single ''bright line'' air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm.[15] The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one-percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm.[16]

For purposes of the 1997 ozone NAAQS, each of the four states included in this proposed action (Maine, New Hampshire, Rhode Island, and Vermont) have contributions below this significance threshold finalized in CSAPR. Specifically, the CSAPR modeling indicates that Maine's ozone contribution to any projected downwind nonattainment site is 0.00 ppb (parts per billion) and Maine's largest contribution to any projected downwind maintenance-only site is 0.08 ppb. The CSAPR modeling indicates that New Hampshire's largest ozone contribution to any projected downwind nonattainment site is 0.02 ppb and New Hampshire's largest ozone contribution to any projected downwind maintenance-only site is 0.07 ppb. The CSAPR modeling indicates that Rhode Island's largest ozone contribution to any projected downwind nonattainment site is 0.02 ppb and Rhode Island's largest contribution to any projected downwind maintenance-only site is 0.08 ppb. The CSAPR modeling indicates that Vermont's largest ozone contribution to any projected downwind nonattainment site is 0.01 ppb and

Harnett, EPA OAQPS, to EPA Regional Air Division Directors, August 15, 2006.

[8] *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), amended on rehearing, 550 F.3d 1176 (2008).

[9] 531 F.3d at 910–11.

[10] *Id.* at 929.

[11] CSAPR proposal, 75 FR 45210, 45237 (August 2, 2010).

[12] *See also* Air Quality Modeling Final Rule Technical Support Document, Appendix F, Analysis of Contribution Thresholds, Docket ID # EPA–HQ–OAR–2009–0491.

[13] CSAPR, 76 FR 48208, 48236–37 (August 8, 2011).

[14] Id.

[15] Id.

[16] Id.

Vermont's largest contribution to any projected downwind maintenance-only site is 0.05 ppb. These ozone contribution values are all well below the one percent screening threshold of 0.85 ppb and, therefore, there are no identified linkages between these four states and downwind projected nonattainment and maintenance sites.

For the 1997 $PM_{2.5}$ and 2006 annual $PM_{2.5}$ NAAQS, the CSAPR modeling indicates that Rhode Island's contribution to any projected downwind nonattainment site is 0.00 micrograms per cubic meter (ug/m^3) and Rhode Island's contribution to any projected downwind maintenance-only site is 0.00 ug/m^3. For the 1997 $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS, the CSAPR modeling indicates that Rhode Island's largest contribution to any projected downwind nonattainment site is 0.02 ug/m^3 and Rhode Island's largest contribution to any projected downwind maintenance-only site is 0.06 ug/m^3. For the 1997 $PM_{2.5}$ and 2006 annual $PM_{2.5}$ NAAQS, the CSAPR modeling indicates that Vermont's contribution to any projected downwind nonattainment site is 0.00 ug/m^3 and Vermont's contribution to any projected downwind maintenance-only site is 0.00 ug/m^3. For the 1997 $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS, the CSAPR modeling indicates that Vermont's largest contribution to any projected downwind nonattainment site is 0.03 ug/m^3 and Vermont's largest contribution to any projected downwind maintenance-only site is 0.05 ug/m^3. These $PM_{2.5}$ contribution values are all well below the one percent screening thresholds of 0.15 ug/m^3 (annual) and 0.35 ug/m^3 (24-hour)[17] and, therefore, there are no identified linkages between Rhode Island and Vermont and downwind projected nonattainment and maintenance sites for the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ standards.[18]

In summary, in CSAPR, the EPA used an air quality analysis to determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered ''linked'' to identified downwind nonattainment and maintenance receptors and was therefore, not considered to significantly contribute to nonattainment, or interfere with maintenance, of the standards in those downwind areas.[19] The CSAPR modeling showed that none of the four states that are the subject of this proposed action (Maine, New Hampshire, Rhode Island, and Vermont) were linked to identified downwind nonattainment and maintenance receptors with respect to the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.[20] Therefore, in the CSAPR rulemaking, the EPA found that these states do not significantly contribute to nonattainment or interfere with maintenance of the standards in those downwind areas. The findings made in the CSAPR rulemaking support the conclusions by each these four states that they do not significantly contribute to nonattainment, or interfere with maintenance, in downwind states for either the 1997 ozone NAAQS or the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS.

Based on the findings made in the CSAPR rulemaking, and the information and analysis provided in all four states' SIP submissions, we are proposing to approve the interstate transport SIPs submitted by Rhode Island on April 30, 2008 and Vermont on April 15, 2009 as meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 1997 ozone and the 1997 $PM_{2.5}$ NAAQS. We are also proposing to approve Maine's April 24, 2008 and New Hampshire's March 11, 2008 SIP submittals as meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 1997 ozone NAAQS. Finally, we are proposing to approve Rhode Island's November 6, 2009 and Vermont's May 21, 2010 SIP submittals as meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS. The EPA's findings confirm the results of the states' analyses: Maine, New Hampshire, Rhode Island, and Vermont do not significantly contribute to nonattainment, or interfere with maintenance, of the 1997 ozone NAAQS and Rhode Island and Vermont do not significantly contribute to nonattainment, or interfere with maintenance, of the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS in any other state. EPA has determined that the SIPs contain adequate provisions to satisfy CAA section 110(a)(2)(D)(i)(I) requirements as to the 1997 ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, for Maine, New Hampshire, Rhode Island, and Vermont, and the 2006 $PM_{2.5}$ NAAQS, for Rhode Island and Vermont.

III. Proposed Action

EPA is proposing to approve the SIP revisions submitted by the states on the following dates as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 ozone NAAQS: April 24, 2008 (Maine); March 11, 2008 (New Hampshire); April 30, 2008 (Rhode Island); and April 15, 2009 (Vermont). In addition, EPA is proposing to approve the SIP revisions submitted by the states on the following dates as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 $PM_{2.5}$ NAAQS: April 30, 2008 (Rhode Island); and April 15, 2009 (Vermont). Also, EPA is proposing to approve the SIP revisions submitted by Rhode Island on November 6, 2009 and Vermont on May 21, 2010 as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. EPA has reviewed these SIP revisions and has found that they satisfy the relevant CAA requirements discussed above. EPA is soliciting public comments on the proposed approval of the SIP revisions, and will consider those comments before taking final action. However, the EPA is not reopening public comment on the analysis and policy decisions finalized in the CSAPR rulemaking, including the air quality modeling and the application of the 1 percent threshold to identify those states whose contribution to identified downwind nonattainment and maintenance receptors are insignificant.

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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

[17] Note this is the screening threshold for the more stringent 2006 24-hour $PM_{2.5}$ NAAQS.

[18] As noted above, EPA previously approved SIP submissions from New Hampshire and Maine as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS (see 77 FR 63228).

[19] 76 FR at 48236 (''States whose contributions are below the thresholds are not included in the Transport Rule for the NAAQS. In other words, we are finding that states whose contributions are below these thresholds do not significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS.'').

[20] *See* Table V.D–1, 76 FR at 48240 (contributions to downwind receptors with respect to the 1997 annual $PM_{2.5}$ NAAQS); Table V.D–4, 76 FR 48241–242 (contributions to downwind receptors with respect to the 2006 24-hour $PM_{2.5}$ NAAQS); and Table V.D–7, 76 FR at 48244–245 (contributions to downwind receptors with respect to the 1997 ozone NAAQS).

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 oxides, Volatile organic compounds.

Dated: December 1, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–30052 Filed 12–14–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2016—0110; FXES11130900000 178 FF09E42000]

RIN 1018–BB79

Endangered and Threatened Wildlife and Plants; Removing the Black-Capped Vireo From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month petition finding; request for comments.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to remove the black-capped vireo (*Vireo atricapilla*) from the Federal List of Endangered and Threatened Wildlife (List) due to recovery (''delist''). This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this species have been eliminated or reduced to the point that the species has recovered and no longer meets the definition of endangered or threatened under the Act. This document also serves as the 12-month finding on a petition to reclassify this species from endangered to threatened on the List.

DATES: We will accept comments received or postmarked on or before February 13, 2017. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 30, 2017.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R2–ES–2016–0110, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2016–0110, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

Copies of Documents: This proposed rule and supporting documents are available on *http://www.regulations.gov.* In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Arlington, TX 76006; telephone 817–277–1100.

FOR FURTHER INFORMATION CONTACT: Debra Bills, Field Supervisor, U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Suite 140, Arlington, TX 76006; telephone 817–277–1100; or facsimile 817–277–1129. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

We want any final rule resulting from this proposal to be as accurate and effective as possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible.

To issue a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

We are specifically requesting comments on:

(1) New information on the historical and current status, range, distribution, and population size of the black-capped vireo, including the locations of any additional populations.

(2) New information on the known and potential threats to the black-capped vireo.

(3) New information regarding the life history, ecology, and habitat use of the black-capped vireo.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arlington, Texas, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposed rule, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in **DATES**. We will schedule public hearings on this proposal, if any are requested, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270), we solicited the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in the Species Status Assessment Report (SSA report) (Service 2016; available at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0110) supporting this proposed rule. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. The peer reviewers had no significant objection to the analysis provided in the SSA report. In general, the peer-review comments were largely minor (editorial) or easily addressed. Substantive comments were specifically addressed, and did not involve changes to the viability analysis of the SSA report.

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that reclassifying a species may be warranted, we make a finding within 12 months of the date of receipt of the petition (''12-month Finding). In this finding, we determine whether the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. We must publish these 12-month findings in the **Federal Register**.

This document represents:

- Our 12-month warranted finding on a July 16, 2012, petition to reclassify the black-capped vireo from endangered to threatened (''downlist'');
- Our determination that the black-capped vireo no longer meets the definition of endangered or threatened under the Act; and
- Our proposed rule to remove the black-capped vireo from the Federal List of Endangered and Threatened Wildlife (''delist'') due to recovery.

Previous Federal Action

The black-capped vireo was determined to be a candidate for listing under the Act on December 30, 1982 (47 FR 58454). On October 6, 1987, the species was listed as endangered, due to various threats including nest parasitism by brown-headed cowbirds and loss of habitat from urbanization, grazing, removal of vegetation for range improvement, and succession (52 FR 37420). Succession is a natural process of change in vegetation over time and black capped vireo habitat is lost when there are fewer wildfires maintaining the vegetation in an early successional stage. Critical habitat was not designated because there was no demonstrable benefit from the potential designation of critical habitat to the vireo and such designation was not considered prudent because additional harassment potentially affecting reproductive success could occur if critical habitat was designated (52 FR 37420). In addition, the habitat of the black-capped vireo occurs in scattered, small patches and occupied habitat would vary over time due to succession of vegetation, and would therefore be difficult to delineate and provide no benefit to recovery (52 FR 37420). A status review (''5-year review'') under section 4(c)(2)(A) of the Act was completed for the species on July 26, 2007. The 5-year review recommended that the species be reclassified (''downlisted'') from endangered to threatened given the increased numbers of known individuals and populations, the reduction in the magnitude of the threats since the time of listing, and the effects of conservation measures on the major threats to the species (USFWS 2007). On July 16, 2012, we received a petition dated July 11, 2012, from The Pacific Legal Foundation, Jim Chilton, the New Mexico Cattle Growers' Association, New Mexico Farm & Livestock Bureau, New Mexico Federal Lands Council, and Texas Farm Bureau requesting that the black-capped vireo be reclassified as threatened based on the analysis and recommendation contained in the 5-year review. The Service published a 90-day finding on September 9, 2013 (78 FR 55046) stating that the petition contained substantial scientific or commercial information indicating that the petitioned action may be warranted. On November 20, 2015, the Service received a complaint (New Mexico Cattle Growers' Association et al. v. United States Department of the Interior et al., No. 1:15–cv–01065–PJK–LF (D. N.M.)) for declaratory judgment and injunctive relief from the New Mexico Cattle Growers' Association, Jim Chilton, New Mexico Farm & Livestock Bureau, New Mexico Federal Lands Council, and Texas Farm Bureau to, among other things, compel the Service to make a 12-month finding on the species.

Species Information

A thorough review of the taxonomy, life history, ecology, and overall

viability of the black-capped vireo is presented in the SSA report for the black-capped vireo (Service 2016; available at *http://www.regulations.gov* and posted at *https://www.fws.gov/southwest/es/ArlingtonTexas/*). The SSA report documents the results of the comprehensive biological status review for the black-capped vireo and provides an account of the species' overall viability through forecasting of the species' condition in the future (Service 2016, entire). In the SSA report, we summarize the relevant biological data and a description of past, present, and likely future stressors to the species, and conduct an analysis of the viability of the species. The SSA report provides the scientific basis that informs our regulatory determination regarding whether this species should be listed as an endangered or a threatened species under the Act. This determination involves the application of standards within the Act, its implementing regulations, and Service policies (see *Finding and Proposed Determination*, below). The SSA report contains the analysis on which this finding is based, and the following discussion is a summary of the results and conclusions from the SSA report. We solicited peer review of the draft SSA report from three objective and independent scientific experts. We received responses from all three of the reviewers, and we modified the SSA report as appropriate.

Species Description and Needs

The black-capped vireo is a migratory songbird that breeds and nests in south central Oklahoma, Texas, and the northern states of Mexico (Coahuila, Nuevo León, Tamaulipas), and winters along Mexico's western coastal states. In general, black-capped vireo breeding habitat is categorized as shrublands and open woodlands.

The resource needs of the black-capped vireo are described not only for individuals and populations, but also for the species rangewide in the SSA report. Life-history needs are generally categorized as breeding, feeding and sheltering; for migratory species this may also include habitat for migration and wintering. Individual black-capped vireos need a suitable breeding habitat patch of at least 1.5 hectares (ha) (3.7 acres (ac)) of shrublands with between 35 and 55 percent shrub cover that consists largely of deciduous shrubs, often oaks in mesic areas, and with a low proportion of junipers. Within breeding habitat patches, shrubs mottes (groups of shrubs) with deciduous foliage from ground level to 3 meters (0 to 9.8 feet) in height are needed for nest concealment and foraging.

Populations of black-capped vireos are described based on the number of adult males the breeding habitat can support. Those sites (defined as geographical areas with suitable breeding habitat) capable of supporting at least 30 adult males are considered ''manageable populations.'' Those sites with suitable breeding habitat capable of supporting 100 or more adult males are considered ''likely resilient populations,'' that have the ability to withstand disturbances of varying magnitude and duration. Brown-headed cowbird (*Molothrus ater*) parasitism rates below 40 percent (Tazik and Cornelius 1993, p. 46; Wilsey et al. 2014, p. 568) are necessary to sustain and expand vireo populations.

Information on use of habitat during migration is sparse. In general, black-capped vireos require airspace for movement and woody vegetation for stopovers extending from the northernmost portion of the breeding grounds to the extent of the known wintering grounds.

The winter range of the black-capped vireo occurs entirely on the slopes of Mexico's Pacific coast. Arid and semi-arid scrub and secondary growth habitat, generally 0.6 to 3.0 m (2 to 10 ft) in height, is needed for feeding and sheltering.

Across its range, the black-capped vireo needs suitable breeding habitat to support manageable and likely resilient populations that are geographically distributed to allow gene flow and dispersal; low brown-headed cowbird parasitism rates to allow sufficient productivity; sufficient airspace and stopover sites (=areas) for migration; and wintering areas of arid and semi-arid scrub and secondary growth habitat along the Pacific slopes of western Mexico. During the breeding season, habitat requirements appear to be more specialized than during wintering and migration. Given the potential for black-capped vireos to use a wide range of habitat types during migration and wintering, much of the subsequent analysis is focused on breeding habitat.

Species Current Conditions

There are no available rangewide population estimates of breeding black-capped vireos. However, reported occurrences (sightings) of black-capped vireos are available for comparing abundance and distribution across timeframes (but see section 4.1, ''Assumptions,'' in the SSA report; Service 2016 regarding inherent differences in survey effort and the differences between reported occurrences and population estimates). At the time of listing in 1987, there were approximately 350 reported black-capped vireo occurrences. From 2009 to 2014 there were 5,244 adult males reported, a 17.5 percent increase from data used for the last review period (2000 to 2005).

At the time of listing in 1987, approximately 350 individual birds were known from 4 Oklahoma counties, 21 Texas counties and 1 Mexican state. The consistency of survey effort has varied throughout the years; however, it represents the best information available to evaluate abundance and distribution rangewide. The known breeding distribution now occurs in 5 Oklahoma counties, 40 Texas counties, and 3 states in Mexico.

Information from 2009 to 2014 indicates there are 14 known populations with 100 males or more (defined as a likely resilient population) throughout the breeding range, 9 of which occur on managed lands (under Federal, State, or municipal ownership, or under conservation easement) in the United States. An additional 20 manageable populations (30 or more adult males, but fewer than 100), 10 of which occur on managed lands, are distributed throughout the range in the United States.

Information gathered from annual black-capped vireo monitoring at four publically-managed areas containing the largest known black-capped vireo populations represents some of the best data available on the species' population trends. These four regularly surveyed areas (Fort Hood Military Installation, Fort Sill Military Installation, Kerr Wildlife Management Area, and Wichita Mountains Wildlife Refuge) show stable or increasing population estimates since 2005. Data reported from 2000 to 2005 indicate these populations represented 64 percent of the known population. From 2009 to 2014 these four major populations accounted for 40 percent of the known rangewide breeding population, which occurs on approximately 27,930 ha (69,000 ac) of habitat. The difference in percentage suggests the black-capped vireo's distribution is more diverse and occurs more on private lands than known from the previous timeframe (2000–2005), indicating that additional unknown populations likely exist on private lands throughout the breeding range. The largest increase in known abundance is an additional large population documented in Val Verde County, Texas. Together, these five large populations were estimated to consist of 14,418 adult males in 2013–14.

The levels of gene flow between extant populations indicate adequate genetic diversity (Vazquez-Miranda et al. 2015, p. 9; Zink et al. 2010, entire) despite some variation in studies with respect to genetic diversity, gene flow, and population structuring (*e.g.,* Barr et al. 2008; Zink et al. 2010; Athrey et al. 2012).

Little is known about the habits of black-capped vireos during migration; however, most evidence suggests that there is a southerly, central Mexican migratory route following the Sierra Madre Oriental (Marshall et al. 1985, p. 4; Farquhar and Gonzalez 2005, entire).

Birds banded on the breeding grounds that return in following years suggest adequate availability of resources during wintering and migration. Survival rates (estimated from return rates) for black-capped vireos at Fort Hood are comparable to the rates of other passerines (Ricklefs 1973; Martin 1995; Kostecke and Cimprich 2008, p. 254).

Information on migration and wintering of black-capped vireos in Mexico is limited to a few studies that document the extent of the wintering range and estimate habitat areas. Winter habitat utilized is more general and diverse than that of the breeding grounds. While specific requirements of winter habitat are unknown, tropical dry forests (areas where arid and semi-arid winter habitats occur) exist in areas normally inaccessible to development. Habitat modelling has suggested wintering areas in Mexico occur across 103,000 to 141,000 square kilometers (km^2) (39,769 to 54,440 square miles (mi^2)) and extend further than previous records have identified, including the states of Guerrero and Chiapas (Vega Rivera et al. 2010, p. 101; Powell 2013, pp. 34–38). Of this area, approximately 7.1 percent (1,000,000 ha (2,471,053 ac)) occurs on natural protected areas (National parks, reserves, etc.) (Vega Rivera et al. 2010, pp. 98–102). Additionally, there are approximately 1,492,400 ha (3,687,801 ac) of lands designated as ''important bird areas'' in the estimated winter range that receive varying levels of protection (Vega Rivera *et al.* 2011, p. 103).

The U.S. portion of the black-capped vireo's range is comprised of a diversity of landownerships, from private lands to several forms of public ownership. Various conservation actions and programs have been developed and implemented in an effort to recover the species. These conservation actions implemented on publically-managed and private lands throughout the species' current range have reversed black-capped vireo declines within several populations. Ongoing active management on publically-managed lands and those under conservation easements has resulted in 40 managed populations in Oklahoma and Texas, varying in size from a single adult male to an estimated 7,478 adult males. Of these, 9 are considered likely resilient populations and another 10 are considered manageable populations. Although information on breeding vireos in Mexico is limited, the vireo is afforded protected status (SEMARNAT 2015, p. 79), known threats appear to be of less magnitude than those in the United States, and densities of known populations have been documented up to six times as high as populations in the United States (Farquhar and Gonzalez 2005, p. 25; Wilkins et al. 2006, p. 28).

The contribution of prescribed fire and wildfire to the development of suitable breeding habitats in Oklahoma and the eastern portion of the species' Texas range is well documented (USFWS 1991, p. 22; Campbell 1995, p. 29; Grzybowski 1995, p. 5), although in the western portion of the species' breeding range in Texas and in Mexico, fire is not as essential in maintaining habitat suitability. The use of prescribed fire as a habitat management tool is increasing or remains constant across most of the United States (Melvin 2015, p. 10). More than 3,156 ha (7,800 ac) in Oklahoma and more than 48,562 ha (120,000 ac) in Texas have been burned annually (2004–2014) with prescribed fire, and much additional acreage is burned by unplanned wildfire (Oklahoma's annual average is approximately 63,940 ha (158,000 ac); Texas' annual average is approximately 322,939 ha (798,000 ac)) (NIFC 2014). Although the majority of these burns were on Federal lands outside of the black-capped vireo's range, there has been an overall increase in the use of prescribed fire as a cost effective tool for range and wildlife management.

Reduction of brood parasitism by brown-headed cowbirds through management programs increases black-capped vireo breeding success (Eckrich et al. 1999, pp. 153–154; Kostecke et al. 2005, p. 57; Wilkins et al. 2006, p. 84; Campomizzi et al. 2013, pp. 714–715). Brown-headed cowbird parasitism rates below 40 percent are vital to sustaining and expanding black-capped vireo populations. The continuation of brown-headed cowbird trapping on Federal and private properties and expansion of this practice to other properties would help reduce parasitism rates and improve black-capped vireo breeding success. In an effort to manage the brown-headed cowbird populations in Texas, the Texas Parks and Wildlife Department has implemented a cowbird trapping program, which provided participating landowners a training and certification process.

Section 10 of the Act provides a regulatory mechanism to permit the incidental take of federally-listed fish and wildlife species by private interests and non-Federal government agencies during otherwise lawful activities. Take, as defined by the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Incidental take is defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Section 10(a)(2)(A) of the Act requires an applicant for an incidental take permit to submit a ''conservation plan'' that specifies, among other things, the impacts that are likely to result from the taking and the measures the permit applicant will undertake to minimize and mitigate such impacts. Conservation plans under the Act have come to be known as ''habitat conservation plans'' (HCPs). There have been eight approved HCPs addressing the ''incidental take'' of black-capped vireos for project-related impacts during the 29 years the species has been listed, all of which are in Texas. In total, approximately 7,843.2 ha (19,381 ac) of black-capped vireo habitat may be impacted, either directly or indirectly, resulting from activities authorized through HCPs. To mitigate black-capped vireo habitat loss, the permittees must preserve and provide funding for approximately 8,239.4 ha (20,360 ac) of habitat restoration and management for off-site black-capped vireo habitats as conservation actions under these HCPs.

Recovery Planning and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans identify site-specific management actions that will achieve recovery of the species and objective, measurable criteria that set a trigger for review of the species' status. Methods for monitoring recovery progress may also be included in recovery plans.

Recovery plans are not regulatory documents; instead they are intended to establish goals for long-term conservation of listed species and define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer

need the protections of the Act. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The black-capped vireo recovery plan was approved by the Service on September 30, 1991 (USFWS 1991). The prospect of complete recovery of the species was indeterminable at that time, and therefore, an interim objective of reclassification from endangered to threatened status was used to develop recovery criteria (USFWS 1991, p. 36). The recovery plan includes the following reclassification criteria:

(1) All existing populations are protected and maintained.

(2) At least one viable breeding population exists in each of the following six locations: Oklahoma, Mexico, and four of six Texas regions.

(3) Sufficient and sustainable area and habitat on the winter range exist to support the breeding populations outlined in (1) and (2).

(4) All of the above have been maintained for at least 5 consecutive years and available data indicate that they will continue to be maintained.

When the recovery plan was approved in 1991, a viable population was estimated, using population viability analysis, to be at least 500 pairs of breeding black-capped vireos. The recovery plan was intended to protect and enhance the populations known at that time, while evaluating the possibility of recovery and developing the necessary delisting criteria if recovery is found to be feasible. The rangewide population was unknown, but the Oklahoma population was thought to be fewer than 300 individual birds. During the 2007 5-year review of the status of the species, it was determined that the 1991 recovery plan was outdated and did not reflect the best available information on the biology of the species and its needs (USFWS 2007, p. 5). Therefore, rather than use the existing outdated recovery criteria, the Service assessed the species' viability, as summarized in the SSA report (Service 2016; available at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2016–0110) to inform the process of making the determination that the black-capped vireo has recovered.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. A species may be reclassified or delisted on the same basis. Consideration of these factors was incorporated in the SSA report (Service 2016; available at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2016–0110) as ''causes and effects,'' and projected in future scenarios to evaluate viability of the black-capped vireo. The effects of conservation measures currently in place were also assessed as part of the current condition of the species in the SSA report and those effects were projected in future scenarios.

Causes and Effects

When the black-capped vireo was listed in 1987, the known threats influencing its status were the loss of suitable breeding habitat (Factor A) and parasitism by brown-headed cowbirds (Factor E). These continue to be the primary factors affecting the species' viability. The loss of breeding habitat in the United States has been linked to changes in vegetation due to fire suppression (vegetational succession), grazing and browsing from livestock and native and nonnative ungulates, and the conversion of breeding habitat to other land uses. In addition, we considered the effects of climate change on available breeding and wintering habitat and other potential habitat impacts in the winter range in order to assess the status of the species throughout its range.

Habitat Loss (Factor A)

Black-capped vireo breeding habitat most likely occurs on lands categorized in agricultural census data by landowners as ''rangeland.'' Therefore, trends in lands categorized as rangeland is a useful indirect measure for estimating the effects of land use changes on the black-capped vireo. There has been a general increasing trend since 1987 for occurrence of rangeland within the black-capped vireo's U.S. breeding range, based on available Agricultural Census data. That is, there has been an increase in the amount of lands reported as rangeland. Since 2002, Oklahoma has reported a 36 percent increase and Texas has reported a 4.4 percent increase in rangeland (USDA 2002a, 2002b, 2012a, and 2012b).

The prevalence of goats in Texas was specifically considered a threat to the black-capped vireo in 1987. Goat browsing can eliminate shrub foliage necessary for black-capped vireo nest concealment. Since that time, sheep and goats within the U.S. range of the vireo have dramatically decreased, largely attributed to the repeal of the National Wool Act of 1954 (7 U.S.C. 1781 *et seq.;* repealed by Pub. L. 103–130 (dated November 1, 1993), with an effective date of December 31, 1995, under section 3(a) of Pub. L. 103–130). From 1987 to 2012, reported numbers of goats decreased by 46.8 percent in counties where black-capped vireos are known to occur (USDC 1987a, 1987b; USDA 2012a, 2012b).

Cattle, white-tailed deer, and nonnative ungulates are also known to impact black-capped vireo habitat by browsing and eliminating shrub foliage necessary for nest concealment; however, this impact is to a lesser extent than the impacts of goats (Graber 1961, p. 316; Shaw et al. 1989, p. 29; Guilfoyle 2002, p. 8; Wilkins et al. 2006, pp. 52–54). Cattle numbers reported by county have also decreased across the black-capped vireo's range from 1987 to 2012 by 37.2 percent (USDC 1987a, 1987b; USDA 2012a, 2012b). While livestock numbers have decreased, rangeland acres have increased. Wilcox et al. (2012) attribute this apparent discrepancy to reductions in stocking density. This overall decline in livestock density has been driven by changing land ownership and the increasing importance of wildlife conservation (Wilcox et al. 2012). White-tailed deer densities in the species' range in Texas have increased by 18.3 percent from 2005 to 2014 (TPWD 2015, p. 27), leading to increased deer browsing, but this increase is considerably less than the decreases in goats and cattle. In Mexico, a primary economic activity is livestock ranching within the breeding range (Morrison et al. 2014, p. 37), although trend data are not available. In some areas of Mexico, livestock appears to be at low densities (small scale) (Morrison et al. 2014, p. 37) and may be separated from breeding vireos by elevation and, therefore, may not be in direct contact with habitat (Farquhar and Gonzalez 2005, p. 30).

Vegetational succession, or the change in species composition over time, continues to affect the black-capped

vireo habitat in the eastern portion of the range in Texas and in Oklahoma. Habitat that is considered to be early successional in the eastern portion of the range is created naturally or artificially by disturbance, usually by fire. In the absence of wildfire or prescribed fire, early successional habitats in the eastern portion of the range grow into wooded habitat that provides unsuitable structure for vireo nesting. In the western portion of the range in Texas and Mexico, suitable black-capped vireo habitat does not typically grow into wooded habitat, and succession management is less important (Hayden et al. 2001, p. 32; Farquhar and Gonzalez 2005, p. 32; McFarland et al. 2012, p. 5).

Overall, the reduction in numbers of goats and cattle compensates for any increase in deer browsing and contributes to a net increase in available breeding habitat. Likewise, the increasing amounts of rangelands also contribute to increased available breeding habitat. In the eastern portion of the range, breeding habitat is considered early successional habitat and associated with disturbance such as fire. Because land managers in the eastern portion of the range are increasingly using fire as a management tool, available breeding habitat has likely increased in this portion of the range. In the western portion of the range, such disturbance is not necessary to maintain suitable habitat and much of the area is currently considered suitable breeding habitat.

Winter Range (Factor A)

Black-capped vireos are more general in habitat selection for wintering, and can use scrub, disturbed habitats, secondary growth habitats, and tropical dry forests as well as shrubs. Although threats to the species on its wintering grounds were not identified at the time of listing or during the 2007 5-year review, they were considered as part of the species status assessment process to determine whether winter habitat availability could be a limiting factor. Dry forests in Mexico are a conservation concern (Miles et al. 2006, p. 502) and have historically been modified for agricultural and other purposes (Powell 2013, p. 100). The majority of impacts to tropical dry forests (greater than 55 percent) occurred prior to the listing of the black-capped vireo (Powell 2013, pp. 101–102). Habitat loss still occurs (Powell 2013, pp. 101–102), but the extent of habitat specifically important to wintering vireos is unknown, but likely diverse, considering the variety of habitats used. Habitat models have suggested the winter range may be as large as 141,000 km^2 (54,440 mi^2) in size (Vega Rivera et al. 2010, p. 101). The remaining habitat may be inaccessible to most anthropogenic impacts, and thus removed from many potential stressors, because it occurs on canyons and slopes.

Brood Parasitism (Factor E)

Brown-headed cowbirds are brood parasites; females remove an egg from a host species nest, lay their own egg to be raised by the adult hosts, and the result usually causes the death of the remaining host nestlings (Rothstein 2004, p. 375). Brood parasitism by brown-headed cowbirds has been documented to affect more than 90 percent of black-capped vireo nests in some Texas study areas (Grzybowski 1991, p. 4). Control of cowbirds through trapping has been shown to significantly reduce parasitism and increase population productivity of vireos (Eckrich et al. 1999, pp. 153–154; Kostecke et al. 2005, p. 28). An evaluation of Breeding Bird Survey data shows brown-headed cowbird detections have been decreasing in Texas and Oklahoma since 1967, specifically in ecoregions where black-capped vireos are known to occur (Sauer et al. 2014, entire).

Furthermore, available data suggests geographic differences in the impact cowbirds have on breeding vireos. Cowbird abundance and parasitism appears to be less prevalent on the western portion of the black-capped vireo's range and in Mexico (Bryan and Stuart 1990, p. 5; Farquhar and Maresh 1996, p. 2; Farquhar and Gonzalez 2005, p. 30; Smith et al. 2012, p. 281; Morrison et al. 2014, p. 18).

Although cowbird abundance appears to be declining and the effects of parasitism are reduced in portions of the vireo's range, cowbird control continues to be necessary to maintain the current number of black-capped vireo populations and individuals in the eastern portion of the range in Texas and in Oklahoma.

Climate Change (Factor E)

The effects of climate change are a concern in ecosystems that are sensitive to warming temperatures and decreased precipitation, such as arid and semi-arid habitats where the black-capped vireo resides. In Texas, climate change models generally predict a three to four degree Fahrenheit (1.6 to 2.2 °C) increase in temperature between 2010 and 2050 (Nielsen-Gammon 2011, p. 2.23; Banner et al. 2010, p. 8, Alder and Hostetler 2013, entire). Predictions on precipitation trends over Texas are not as clear (Nielsen-Gammon 2011, p. 2.28), but the models tend to suggest that Texas weather will become drier (Banner et al. 2010, p. 8, Alder and Hostetler 2013, entire).

Although the impact from the effects of climate change on shrubland habitat required by the black-capped vireo for breeding is uncertain, shrub encroachment into grasslands in North America, primarily due to fire suppression and livestock grazing, is well documented (Van Auken 2000, entire; Briggs et al. 2005, entire; Knapp et al. 2007, p. 616). Projected warming temperatures and dry conditions will likely influence future shrubland dominance (Van Auken 2000, p. 206). Evidence suggests that within the far west portion of the black-capped vireo's range, the effects of climate change and fire suppression would result in a shrubland-dominated landscape (White et al. 2011, p. 541). In this scenario, the availability of shrub habitat would be the least affected, and potentially more prevalent on the landscape which may increase the available amount of suitable breeding habitat.

Species Future Conditions and Viability

We evaluated overall viability of the black-capped vireo in the SSA report (Service 2016; available at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2016–0110) in the context of resiliency, redundancy, and representation. Species viability, or the ability to survive long term, is related to the species' ability to withstand catastrophic population and species-level events (redundancy), the ability to adapt to changing environmental conditions (representation), and the ability to withstand disturbances of varying magnitude and duration (resiliency). The viability of a species is also dependent on the likelihood of new stressors or continued threats now and in the future that act to reduce a species' redundancy, representation, and resiliency.

In the SSA report, we forecast the persistence of known populations of black-capped vireos over the next 50 years. We chose 50 years to reflect specific climate change models that are relevant to the black-capped vireo and its habitat. The 50 year timeframe also reflects our ability to project land management decisions. We developed multiple future conditions scenarios for the known manageable and likely resilient populations based on both continued management (*i.e.,* continuing the current conditions of habitat and cowbird management) and decreased management (Factor D). For the decreased management scenarios, populations on private lands were

considered to have no management in the future, while habitat and cowbird management on publically-managed lands was projected to diminish in scale or frequency that would not continue to provide for the needs of the species. The decreased management scenario projected the future conditions of the species without the continued protections of the Act. All of the scenarios are considered to be within the realm of reasonable possibility. Even in the worst case scenario, at least 27 of the 34 known manageable and likely resilient populations, have a moderate to high (*i.e.* greater than 50 percent) likelihood of persisting over the next 50 years, indicating adequate redundancy across the species' range. Likewise, those populations projected in the worst case scenario are distributed throughout the range as multiple populations within each of the different areas of representation indicating adequate redundancy within each of the representative areas (as described below).

We evaluated several studies with respect to representation in the black-capped vireo, mostly involving genetic diversity. Although there is discrepancy between studies, there is evidence that adequate gene flow for healthy genetic diversity exists across known breeding populations. Additionally, there is a diversity of habitat types utilized within both the breeding and wintering ranges. For these reasons, the black-capped vireo appears to have adequate representation both genetically and ecologically to allow for adaptability to environmental changes.

Resiliency, in terms of habitat capable of supporting greater than 100 adult males, for the eastern portion of the black-capped vireo's breeding range is dependent on vegetation and cowbird management. In the western portion of the range, populations are more resilient, because management is not required to maintain suitable breeding habitat and threats related to cowbirds are less severe. Since 2005, resiliency has increased in regularly monitored populations and under future scenarios the number of likely resilient populations either increases or remains close to current levels (Service 2016), therefore, we expect that trend in increasing resiliency to continue into the future.

Currently, we consider the black-capped vireo to be a conservation-reliant species meaning it is likely that conservation actions, in the form of habitat and cowbird management, are needed for persistence of breeding populations in a portion of its range. This is because many populations require management activities, especially in the eastern portion of the breeding range, to persist. In considering its management needs, the forecast of future conditions includes scenarios based on the needs of the species, stressors, identification of additional populations, and restoration efforts. Our forecasts that produce stable or increasing resiliency and redundancy reflect the differences in the current conditions of the species compared to the status assessment that was conducted 30 years ago, which led to the species' listing in 1987.

We consider active management of threats, where necessary, to be essential to the persistence of the species, as evidenced by the historical increases in the known population and distribution. Prescribed fire as a management tool is a cost effective way to restore prairies and shrublands, reduce impacts of invasive juniper, and often used to benefit game species (*e.g.,* deer, wild turkey). Such management actions may directly and indirectly benefit black-capped vireos when they occur within the breeding range. The Service believes our Federal and State conservation partners, who are largely responsible for the recovery of the species, will continue to manage black-capped vireo populations on publically-managed lands and promote management actions across the breeding range of the species, particularly given these compatible goals. In particular, the Integrated Natural Resource Management Plans for Fort Hood and Fort Sill will continue management actions that directly benefit black-capped vireos. Likewise, prescribed fire is being used as a management tool for a variety of species at most publically-managed areas within the current breeding range of the black-capped vireo, and those management actions will continue regardless of the listing status of black-capped vireos. Black-capped vireo populations existing on properties under management through public ownership (Federal, state, municipal) or easement are generally projected to persist under short and long term conditions. Even under diminished management specific to black-capped vireos, many of these locations are better suited to provide resources for the black-capped vireo, often due to the conservation mission of the property (*e.g.,* state parks).

Finding and Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the black-capped vireo. Our analysis indicates the known threats at the time of listing, habitat loss (Factor A) through land use changes, livestock grazing, and vegetation succession, and brown-headed cowbird parasitism (Factor E), are reduced or adequately managed. Regardless of the listing status of the black-capped vireo, we expect prescribed fire and other management actions to continue in the eastern portion of the range because they represent actions that are necessary for landscape and rangeland management and are aligned with the conservation mission of many landowners where large populations of black-capped vireos currently exist (Factor D). Additionally, no new threats have been identified (Factors B and C). We find that the species has recovered so that it no longer meets the definition of endangered or threatened under the Act.

Since the black-capped vireo was listed, its known abundance and distribution have increased. Currently, we know of 20 manageable and 14 likely resilient populations (as those terms are defined in the SSA report) across the species' breeding range. We assessed the likelihood of persistence of these populations over the next 50 years. In the worst case scenario, the black-capped vireo would be expected to diminish, but still remain above the level reported from 2000 to 2005. The black-capped vireo appears to have adequate redundancy, representation, and resiliency to persist over the next 50 years.

The primary threats to the species continue to be habitat loss through land use conversion and vegetational succession, and brown-headed cowbird parasitism, although most threats have decreased in magnitude or are adequately managed, particularly through the use of prescribed fire for various habitat restoration purposes not directly related to black-capped vireo management. Nevertheless, under current management, these threats are mitigated such that vireo numbers are robust and increasing. The wintering area for the black-capped vireo occurs entirely in Mexico, but many of the existing habitat areas are buffered from degradation due to limited accessibility and rugged terrain, so we do not anticipate significant reductions in habitat quality or quantity even without specific management assurances.

Based on the analysis in the SSA report (Service 2016; available at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2016–0110), and summarized above, the black-capped vireo does not currently meet the Act's definition of endangered in that it is not in danger of extinction throughout all of its range. In addition, the black-capped vireo is not

a threatened species because it is not likely to become endangered in the foreseeable future throughout all of its range.

Significant Portion of the Range Analysis

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Having determined that the black-capped vireo is not endangered or threatened throughout all of its range, we next consider whether there are any significant portions of its range in which the black-capped vireo is in danger of extinction or likely to become so. We published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578; July 1, 2014). The final policy states that: (1) If a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's' contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout a significant portion of its range, and the population in that significant portion is a valid distinct population segment (DPS), we will list the DPS rather than the entire taxonomic species or subspecies.

The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become endangered in the foreseeable future, throughout all of its range, we list the species as an endangered species or threatened species, and no SPR analysis will be required. If the species is neither in danger of extinction, nor likely to become so throughout all of its range, as we have found here, we next determine whether the species is in danger of extinction or likely to become so throughout a significant portion of its range. If it is, we will continue to list the species as an endangered species or threatened species, respectively; if it is not, we conclude that listing the species is no longer warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether substantial information indicates that: (1) The portions may be ''significant''; and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to have a greater risk of extinction, and thus would not warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions would not warrant further consideration.

We identified portions of the black-capped vireo's range that may be significant, and examined whether any threats are geographically concentrated in some way that would indicate that those portions of the range may be in danger of extinction, or likely to become so in the foreseeable future. Within the breeding range, distinctions can be made between Mexico, Texas, and Oklahoma, based on vegetation types and, in Mexico, based on observed higher densities of birds. Additionally, a distinction could be made between the eastern and western portion of the breeding range, based on the importance of the threats of cowbird parasitism and vegetational succession (both more impactful in the eastern range). As noted above, observed trends in these threats have been reduced or are adequately managed. While these geographic distinctions may be significant, information and analysis indicates that the species is unlikely to be in danger of extinction or to become so in the foreseeable future in these portions, given that the increases in reported rangeland statistics, decreases in cattle and goats, and ongoing management of cowbirds have occurred across the range, including within the eastern portion of the range. Therefore, these portions do not warrant further consideration to determine whether they are a significant portion of its range.

We also evaluated representation across the black-capped vireo's range to determine if certain areas were in danger of extinction, or likely to become so, due to isolation from the larger range. Several studies have addressed genetic diversity of the black-capped vireo, particularly due to its fairly restricted breeding range both historically and currently, and due to the ephemeral nature of its habitat in portions of its range and its patchy distribution in the breeding range. Evidence exists that population differentiation has occurred over the black-capped vireo's breeding range due to limited gene flow between breeding populations (Barr et al. 2008, entire). However, other studies have shown no differentiation of populations and that adequate gene flow exists (Vazquez-Miranda et al. 2015, p. 9; Zink et al. 2010, entire). Adult black-capped vireos show strong site fidelity to territories between breeding seasons, especially in larger populations (USFWS 1991, p. 19). Gene flow between populations is largely dependent on the proximity of populations, in order to facilitate dispersal of breeding birds. Dispersal distances for adults is generally 0.14 to 0.41 kilometers (km) (0.09 to 0.25 miles (mi)) (DeBoer and Kolozar 2001, entire); however, long dispersal distances have been recorded up to 12.8 km (8 mi) (USFWS 1991, p. 19). Natal dispersal, the movement from hatch site to breeding site, is known to be much greater, generally from 21 to 30 km (13 to 19 mi) (Grzybowski 1995, p. 18; Cimprich et al. 2009, p. 46). The longest

dispersal distance of a banded nestling re-sighted as a breeding adult was 78 km (48.5 mi) (Cimprich et al. 2009, entire). The known populations of black-capped vireos are geographically spread widely across the species' historical range and habitat types, ensuring that the global population is not singular and isolated. Additionally, the known distribution demonstrates robust representation when considering genetic heterozygosity and lack of genetic structuring across these populations.

Our analysis indicates that there is no significant geographic portion of the range that is in danger of extinction or likely to become so in the foreseeable future. Therefore, based on the best scientific and commercial data available, no portion warrants further consideration to determine whether the species may be endangered or threatened in a significant portion of its range.

Conclusion

We have determined that none of the existing or potential stressors cause the black-capped vireo to be in danger of extinction throughout all or a significant portion of its range, nor is the species likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; or (3) the original scientific data used at the time the species was classified were in error. On the basis of our evaluation, we conclude that, due to recovery, the black-capped vireo is not an endangered or threatened species. We therefore propose to remove the black-capped vireo from the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11(h).

Effects of the Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to remove the black-capped vireo from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the black-capped vireo. There is no critical habitat designated for this species; therefore, this proposed rule would not affect 50 CFR 17.95.

Removal of the black-capped vireo from the List of Endangered and Threatened Wildlife would not affect the protection given to all migratory bird species under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703–712). The take of all migratory birds, including the black-capped vireo, is governed by the MBTA. The MBTA makes it unlawful, at any time and by any means or in any manner, to pursue, hunt, take, capture, attempt to take or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof (16 U.S.C. 703(a)). The MBTA regulates the taking of migratory birds for educational, scientific, and recreational purposes. Section 704 of the MBTA states that the Secretary of the Interior (Secretary) is authorized and directed to determine when, and to what extent, if at all, and by what means, the take of migratory birds should be allowed, and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that any take is compatible with the protection of the species. Modification to black-capped vireo habitat would constitute a violation of the MBTA only to the extent it directly takes or kills a black-capped vireo (such as removing a nest with chicks present).

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We will coordinate with other Federal agencies, State resource agencies, interested scientific organizations, and others as appropriate to develop and implement an effective post-delisting monitoring (PDM) plan for the black-capped vireo. We plan to publish a notice of availability of a draft PDM plan by June 30, 2017 and include the final PDM plan should this proposed delisting be finalized. The PDM plan will build upon current research and effective management practices that have improved the status of the species since listing. Ensuring continued implementation of proven management strategies, such as prescribed fire and cowbird control, that have been developed to sustain extant populations will be a fundamental goal for the PDM plan. The PDM plan will identify measurable management thresholds and responses for detecting and reacting to significant changes in the black-capped vireo's populations, distribution, and persistence. If declines are detected equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines, including considerations of habitat changes, substantial human persecution, stochastic events, or any other significant evidence. The investigation will be to determine if the black-capped vireo warrants expanded monitoring, additional research, additional habitat protection, or resumption of Federal protection under the Act.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) 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 **ADDRESSES**. 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 are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as

defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2016–0110, or upon request from the Arlington, Texas, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Service's Arlington, Texas, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Vireo, black-capped'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

Dated: November 30, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–29547 Filed 12–14–16; 8:45 a.m.]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 81, No. 241
Thursday, December 15, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 9, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 17, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR part 1924–A, Planning and Performing Construction and Other Development.

OMB Control Number: 0575–0042.

Summary of Collection: The Rural Housing Service (RHS) is the credit agency for rural housing and community development within the Rural Development mission area of the United States Department of Agriculture. RHS offers a supervised credit program to build modest housing and essential community facilities in rural areas. Section 501, section 506 and section 509 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe sanitary living conditions and adequate farm building and other structures in rural areas.

Need and use of the Information: RHS provides several forms to assist in the collection and submission of information. The information will be used to determine whether a loan/grant can be approved; to ensure that RHS has adequate security for the loans financed; to monitor compliance with the terms and conditions of the agency loan/grant and to monitor the prudent use of Federal funds. If the information is not collected and submitted, RHS would have no control over the type and quality of construction and development work planned and performed with Federal funds.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local and Tribal Government.

Number of Respondents: 14,448.

Frequency of Responses: Recordkeeping; Report: On occasion.

Total Burden Hours: 60,476.

Rural Housing Service

Title: Real Estate Title Clearance and Loan Closing—7 CFR 1927–B.

OMB Control Number: 0575–0147.

Summary of Collection: Rural Housing Service is a credit agency for the Department of Agriculture. The Agency offers a supervised credit program to build family farms, modest housing, sanitary water and sewer systems, essential community facilities, businesses and industries in rural areas. Section 306 of the Consolidated Farm and Rural Development Act (CONTACT), 7 U.S.C. 1926.a (as amended), authorizes RUS to make loans to public agencies, American Indian tribes, and non-profit corporations. The loans fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Section 501 of Title V of the Housing Act of 1949, as amended, provides authorization to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings and to provide decent, safe and sanitary living conditions in rural areas. The Secretary of Agriculture is authorized to prescribe regulations to ensure that these loans, made with federal funds, are legally secured.

Need and use of the Information: The approved attorney/title company (closing agent) and the field office staff collect the required information. Forms and or guidelines are provided to assist in the collection, certification and submission of this information. Most of the forms collect information that is standard in the industry. If the information is collected less frequently, the agency would not obtain the proper security position on the properties being taken as security and would have no evidence that the closing agents and agency meet the requirements of this regulations.

Description of Respondents: Individuals or households; Business or other for-profit, Not-for-profit institutions; Farms.

Number of Respondents: 13,500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,925.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–30060 Filed 12–14–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0041]

General Conference Committee of the National Poultry Improvement Plan; Intent To Reestablish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Agriculture intends to reestablish the General Conference Committee of the National Poultry Improvement Plan (Committee) for a 2-year period. The Secretary of Agriculture has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. Denise L. Brinson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The purpose of the General Conference Committee of the National Poultry Improvement Plan (Committee) is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health.

The Committee Chairperson and the Vice Chairperson shall be elected by the Committee from among its members. There are seven members on the Committee. The poultry industry elects the members of the Committee. The members represent six geographic areas with one member-at-large.

Done in Washington, DC, this 9th day of December 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–30124 Filed 12–14–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee (PAC) will meet in Wenatchee, Washington. The committee is authorized pursuant to the implementation of E–19 of the Record of Decision and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to provide advice and make recommendations to promote a better integration of forest management activities between Federal and non-Federal entities to ensure that such activities are complementary. PAC information can be found at the following Web site: *http://www.fs.usda.gov/main/okawen/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Wednesday, January 25, 2017, from 9:00 a.m. to 3:00 p.m.

All PAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Okanogan-Wenatchee National Forest (NF) Headquarters Office, 215 Melody Lane, Wenatchee, Washington.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Okanogan-Wenatchee NF Headquarters Office. Please call ahead at 509–664–9292 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Robin DeMario, PAC Coordinator by phone at 509–664–9292, or by email at *rdemario@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to update members on the:

1. Sustainable recreation strategy and how it ties in to district recreation planning and the Travel Management Plan;

2. Forest Plan Revision Science Synthesis;

3. Strategic prioritization of landscape restoration work on the forest; and

4. Collaborative Forest Landscape Restoration.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by January 16, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Robin DeMario, PAC Coordinator, 215 Melody Lane, Wenatchee, Washington 98801; or by email to *rdemario@fs.fed.us,* or via facsimile to 509–664–9286.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: December 6, 2016.

Michael R. Williams,

Forest Supervisor, Okanogan-Wenatchee National Forest.

[FR Doc. 2016–30118 Filed 12–14–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[11/22/2016 through 12/5/2016 (Amended)]

Firm name	Firm address	Date accepted for investigation	Product(s)
Allegheny-York Co.	3995 North George Street, Manchester, PA 117345.	11/22/2016	The firm manufactures hydraulic and pneumatic sealing components.
Byers' Choice, Ltd.	4355 County Line Road, Chalfont, PA 18914.	11/30/2016	The firm manufactures ornamental figurines, known as ''The Carolers.''
Pyott-Boone Electronics, Inc.	1459 Wittens Mill Road, North Tazewell, VA 24630.	11/30/2016	The firm manufactures amplifiers, passive units and gas monitors.
Valtech Corporation	2113 Sanatoga Station Road, Pottstown, PA 19464.	12/1/2016	The firm manufactures thermoset plastic materials with unique properties that are used in the production of semiconductor or solar wafers.
Supreme Manufacturing Company d/b/a C&L Supreme.	1755 East Birchwood Avenue, Des Plaines, IL 60018.	12/5/2016	The firm manufactures rollers, brackets, housing and other miscellaneous metal components for data processing machines.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–30162 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/6/2016 through 12/9/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Dakota Bodies, LLC	201 20th Avenue, Southeast Watertown, SD 57201.	12/8/2016	The firm manufactures custom truck bodies and accessories.
SmartLam, LLC	335 Spokane Avenue, Whitefish, MT 59937.	12/9/2016	The firm manufactures industrial grade laminated wood panels and related products.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–30094 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Notice of Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 31, 2016, the Department of Commerce (the Department) initiated, and published

the preliminary results of, the changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. In that notice, we preliminarily determined that Avanti Frozen Foods Private Limited (Avanti Frozen) is the successor-in-interest to Avanti Feeds Limited (Avanti Feeds) for purposes of determining antidumping duty cash deposits and liabilities. No interested party submitted comments on our preliminary results. Therefore, for these final results, the Department continues to find that Avanti Frozen is the successor-in-interest to Avanti Feeds.

DATES: Effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: E. Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–6274.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2016, Avanti Frozen requested that the Department conduct an expedited changed circumstances review, pursuant to section 751(b) of the Tariff Act of 1930 (the Act), 19 CFR 351.216(b), and 19 CFR 351.221(c)(3), to confirm that Avanti Frozen is the successor-in-interest to Avanti Feeds for purposes of determining antidumping duty cash deposits and liabilities. In its submission, Avanti Frozen explained that Avanti Feeds underwent a business reorganization and transferred its shrimp business to its subsidiary company, Avanti Frozen.[1]

On October 31, 2016, the Department initiated this changed circumstances review and published the notice of preliminary results, determining that Avanti Frozen is the successor-in-interest to Avanti Feeds.[2] In the *Initiation and Preliminary Results,* we provided all interested parties with an opportunity to comment and request a public hearing regarding our preliminary finding that Avanti Frozen is the successor-in-interest to Avanti Feeds. We received no comments from interested parties

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[3] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Final Results of Changed Circumstances Review

For the reasons stated in the *Initiation and Preliminary Results,* and because we received no comments from interested parties to the contrary, the Department continues to find that Avanti Frozen is the successor-in-interest to Avanti Feeds. As a result of this determination, we find that Avanti Frozen should receive the cash deposit rate previously assigned to Avanti Feeds in the most recently-completed review of the antidumping duty order on shrimp from India.[4] Consequently, the Department will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by Avanti Frozen and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 2.20 percent, which is the current antidumping duty cash-deposit rate for Avanti Feeds.[5] This cash deposit requirement shall remain in effect until further notice.

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act, as amended, and 19 CFR 351.216 and 351.221(c)(3).

Dated: December 8, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–30147 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Letter from Avanti Frozen entitled ''Frozen Warmwater Shrimp form India: Request to Initiate a Successor-in-Interest Changed Circumstances Review,'' dated September 7, 2016, at 2.

[2] *See Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 81 FR 75376 (October 31, 2016) (*Initiation and Preliminary Results*).

[3] For a complete description of the Scope of the Order, *see Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 62867 (September 13, 2016) (*10th AR*), and accompanying Issues and Decision Memorandum at ''Scope.''

[4] *See, e.g., Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico,* 74 FR 41681, 41682 (August 18, 2009).

[5] Avanti Feeds was assigned a 2.20 percent dumping margin in the 2014–2015 administrative review of the AD order on shrimp from India. *See 10th AR.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–806]

Pasta From Turkey: Final Results of Countervailing Duty Administrative Review; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 10, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the countervailing duty order on pasta from Turkey. The period of review (POR) is January 1, 2014, through December 31, 2014. The review covers one producer/exporter of subject merchandise: Bessan Makarna Gida San. Ve Tic. A.Ş. (Bessan). We invited parties to comment on the *Preliminary Results.* We received no comments. Accordingly, for the final results, we continue to find that Bessan received countervailable subsidies during the POR.

DATES: Effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Aimee Phelan or Mark Kennedy, 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) 482–0697 or (202) 482–7883, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2016, the Department published the *Preliminary Results* of the administrative review.[1] The Department gave interested parties an opportunity to comment on the *Preliminary Results.* We received no comments. The Department has conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of the order consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less,

[1] *See Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2014,* 81 FR 52825 (August 10, 2016) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum, unchanged in these final results.

whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the order is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polyethylene bags, of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under review is currently classifiable under subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Final Results of Review

Because the Department received no comments with respect to the *Preliminary Results,* we made no changes to the *Preliminary Results.* As a result of this review, we determine that countervailable subsidies were provided to the respondent for the period January 1, 2014, through December 31, 2014, at the following rate:

Producer and/or exporter	Subsidy rate (percent)
Bessan Makarna Gida San. Ve Tic. A.Ş. Co.	2.21

Assessment Rates

In accordance with 19 CFR 351.212(b)(2), the Department intends to issue assessment instructions to U.S. Customs and Boarder Protection (CBP) 15 days after the date of publication of these final results to liquidate shipments of subject merchandise produced by Bessan entered, or withdrawn from warehouse, for consumption on or after January 1, 2014 through December 31, 2014 at the percent rate, as listed above.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated CVDs in the amount shown above for shipments of subject merchandise by Bessan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 8, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–30151 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–033]

Large Residential Washers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that imports of large residential washers (LRWs) from the People's Republic of China (PRC) are being, or likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2015, through September 30, 2015. The final weighted-average dumping margins for this investigation are listed in the ''Final Determination Margins'' section of this notice.

DATES: Effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Rebecca Trainor, AD/CVD Operations, Office VIII, respectively, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–4007.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* in the LTFV investigation of large residential washers from the PRC on July 26, 2016.[1]

A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document, and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

[1] *See Large Residential Washers from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 81 FR 48741 (July 26, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Antidumping Duty Investigation of Large Residential Washers from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of Sales at Less-Than-Fair-Value'' (Issues and Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

Period of Investigation

The POI is April 1, 2015, through September 30, 2015.

Scope of the Investigation

The products covered by this investigation are LRWs. These products are properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8450.20.0040 and 8450.20.0080. Covered merchandise may also enter under the following HTSUS subheadings: 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. For a complete description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Scope Comments

Since the *Preliminary Determination,* the Department has requested and received comments on the scope of this investigation from the parties in this investigation. *See* Issues and Decision Memorandum for further details. The scope in Appendix I reflects the final scope language.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice as Appendix II.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in August and September 2016, we verified the sales and factors of production information submitted by the two mandatory respondents in this case: Nanjing LG-Panda Appliances Co., Ltd. (LG) and Suzhou Samsung Electronics Co., Ltd./Suzhou Samsung Electronics Co. Ltd—Export (collectively, Samsung). We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by both respondents.[3]

Changes to the Dumping Margin Calculations Since the Preliminary Determination

Based on the Department's analysis of the comments received and findings at verification, we made certain changes to our dumping margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[4] the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[5]

Final Determination Dumping Margins

The Department determines, as provided in section 735 of the Act, that the following weighted-average dumping margins exist for the period April 1, 2015, through September 30, 2015:

Exporter	Producer	Weighted-average margin (%)
Nanjing LG-Panda Appliances Co., Ltd	Nanjing LG-Panda Appliances Co., Ltd	32.12
Suzhou Samsung Electronics Co., Ltd./Suzhou Samsung Electronics Co. Ltd—Export.	Suzhou Samsung Electronics Co., Ltd./Suzhou Samsung Electronics Co. Ltd—Export.	52.51
PRC-Wide Entity		44.28

PRC-Wide Rate

In calculating rates for non-individually investigated respondents in the context of non-market economy cases, the Department looks to section 735(c)(5)(A)–(B) of the Act, which provides instructions for calculating the all-others rate in an investigation.[6] Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be equivalent to the weighted average of the estimated weighted-average dumping margins calculated for exporters and producers individually investigated, excluding any margins that are zero, *de minimis,* or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that where all individually investigated exporters or producers receive rates that are zero, *de minimis,* or based entirely on facts available, the Department may use ''any reasonable method'' to establish the all-others rate for those companies not individually investigated.

In this investigation, the Department examined all known exporters/producers of the subject merchandise. In addition, no other PRC exporters of the subject merchandise during the POI established entitlement to a separate rate.[7] Thus, no non-individually-examined separate rates are being assigned in this investigation. Furthermore, there currently exist no respondents that have failed to cooperate in this investigation, and there are no zero or *de minimis* margins. Therefore, consistent with the *Preliminary Determination,* we have based the PRC-wide rate on a weighted-average of the calculated rates determined for the mandatory

[3] *See* Memorandum to the File from Brian Smith and Brandon Custard, Senior International Trade Compliance Specialists, ''Verification of the Questionnaire Responses of Nanjing LG-Panda Appliances Co., Ltd. in the Antidumping Investigation of Large Residential Washers from the People's Republic of China (PRC),'' dated October 5, 2016; Memorandum to the File from David Goldberger and Kate Johnson, Senior International Trade Compliance Specialists, ''Verification of the CEP Sales Response of Nanjing LG-Panda Appliances Co., Ltd. and LG Electronics USA, Inc.,'' dated October 6, 2016; Memorandum to the File from Brian Smith and Brandon Custard, Senior International Trade Compliance Specialists, ''Verification of the Questionnaire Responses of Suzhou Samsung Electronics Co., Ltd. (SSEC) and Suzhou Samsung Electronics Co., Ltd.—Export (SSEC) (collectively Samsung) in the Antidumping Investigation of Large Residential Washers (LRWs) from the People's Republic of China (PRC),'' dated October 7, 2016; and Memorandum to the File from Kate Johnson and David Goldberger, Senior International Trade Compliance Specialists, ''Verification of the CEP Sales Response of Suzhou Samsung Electronics Co., Ltd., Suzhou Samsung Electronics Co., Ltd.—Export, and Samsung Electronics America, Inc.,'' dated October 14, 2016.

[4] *See Large Residential Washers from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 81 FR 1398 (January 12, 2016) (*Initiation Notice*).

[5] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' dated April 5, 2005 (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[6] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at page 4–5.

[7] *See Preliminary Determination,* 81 FR at 48742.

respondents,[8] consistent with section 735(c)(5)(A) of the Act.[9]

Critical Circumstances

In the *Preliminary Determination,*[10] we found that critical circumstances did not exist for entries of subject merchandise from LG, but did exist for entries of subject merchandise from Samsung and the PRC-wide entity. Based on an analysis of updated shipment data provided by LG and Samsung (*i.e.,* including July 2016 data), as is our practice, we continue to find that critical circumstances do not exist with respect to LG, and for this final determination, we also find that critical circumstances do not exist with respect to Samsung and the PRC-wide entity. For further discussion, *see* the Issues and Decision Memorandum.[11]

Continuation of Suspension of Liquidation

As noted above, the Department has found that critical circumstances do not longer exist with respect to imports of the subject merchandise from Samsung or the PRC-wide entity. Accordingly, for Samsung and the PRC-wide entity, in accordance with section 735(c)(3) of the Act, we will instruct Customs and Border Protection (CBP) to discontinue the suspension of liquidation, and to liquidate, without regard to antidumping duties, subject merchandise exported by Samsung and the PRC-wide entity and entered, or withdrawn from warehouse, on or after April 27, 2016, and before July 26, 2016.

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation of all imports of the merchandise subject to the investigation from the respondents and the PRC-wide entity, that were entered or withdrawn from warehouse, for consumption on or after July 26, 2016, the date of publication of the *Preliminary Determination* in the **Federal Register**, and require a cash deposit as noted below.

The Department will instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds U.S. price as follows: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate is the weighted-average dumping margin listed for that combination in the table; (2) for all combinations of PRC exporters/producers of merchandise under consideration not listed in the table above, the cash deposit rate is the weighted average dumping margin listed for the PRC-wide entity in the table above; and (3) for all non-PRC exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. The suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise from the PRC no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: December 8, 2016.

Paul Piquado

Assistant Secretary for Enforcement and Compliance.

Appendix I: Scope of the Investigation

The products covered by this investigation are all large residential washers and certain parts thereof from the People's Republic of China.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm), except as noted below.

Also covered are certain parts used in large residential washers, namely: (1) All cabinets, or portions thereof, designed for use in large residential washers; (2) all assembled tubs[12] designed for use in large residential washers which incorporate, at a minimum: (a) A tub; and (b) a seal; (3) all assembled baskets[13] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper;[14] (b) a base; and (c) a drive hub;[15]

[8] With two respondents, we normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We then compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). Since the *Preliminary Determination,* we requested and received complete publicly-ranged quantities from both respondents to properly conduct this comparison. *See* Samsung's August 11, 2016 Sections A and D Supplemental Questionnaire Response at Exhibit SAD–1, and LG's July 29, 2016, Section A Supplemental Questionnaire Response. For the final determination, we are using a weighted-average of the dumping margins calculated using the publicly-ranged quantities for the mandatory respondents as the PRC-wide rate. *See also,* Memorandum to the File, ''Large Residential Washers from the People's Republic of China: Calculation of the Final Margin for the PRC-Wide Entity'' dated December 8, 2016.

[9] *See Welded Stainless Pressure Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value,* 79 FR 31092–93 (May 30, 2014); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania,* 65 FR 39125, 39127 (June 23, 2000).

[10] *See Preliminary Determination,* 81 FR at 48742.

[11] *See also* Memorandum to the File from Brian C. Smith, ''Final Critical Circumstances Analysis,'' dated December 8, 2016.

[12] A ''tub'' is the part of the washer designed to hold water.

[13] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[14] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[15] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

and (4) any combination of the foregoing parts or subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' segment meeting either of the following two definitions:

(1)(a) It contains payment system electronics; [16] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners; [17] or

(2)(a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[18] the unit cannot begin a wash cycle without first receiving a signal from a bona fide payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a vertical rotational axis; (2) are top loading; [19] (3) have a drive train consisting, *inter alia,* of (a) a permanent split capacitor (PSC) motor,[20] (b) a belt drive,[21] and (c) a flat wrap spring clutch.[22]

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a horizontal rotational axis; (2) are front loading; [23] and (3) have a drive train consisting, *inter alia,* of (a) a controlled induction motor (CIM),[24] and (b) a belt drive.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a horizontal rotational axis; (2) are front loading; and (3) have cabinet width (measured from its widest point) of more than 28.5 inches (72.39 cm).

The products subject to this investigation are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II: List of Topics in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Margin Calculations
VI. Discussion of the Issues:

General

Comment 1: Critical Circumstances
Comment 2: Differential Pricing and Use of Average-to-Average Comparisons
Comment 3: Differential Pricing and Use of ''Zeroing''
Comment 4: Scope—Subassemblies and Cabinet Portions
Comment 5: Scope—Pedestal Washers
Comment 6: Use of Acquisition Costs for Surrogate Value Selection
Comment 7: Use of Subheading 8450.90 to Value Certain Parts
Comment 8: Surrogate Financial Ratios
Comment 9: Factors of Production Underreporting

Samsung

Comment 10: Seven Assembled Parts Containing Multiple Materials
Comment 11: Other Washer Parts
Comment 12: Assembly S. Panel Control
Comment 13: Weight Balancer (also known as Concrete Counterweight)
Comment 14: Drain Pump Assembly
Comment 15: Thermistors and Thermistor Assemblies, Pressure Sensors, and MEMS Sensors
Comment 16: Motor Drain Clutch
Comment 17: Assembly Hinge
Comment 18: Assembly Hose Circulation
Comment 19: Flange Shaft Spider
Comment 20: Inlay Panel
Comment 21: Tapping Screws
Comment 22: Warranty Expenses
Comment 23: Corrections from Verification
Comment 24: Programming Clerical Error in the Preliminary Determination

LG

Comment 25: Motor and Pump Assembly
Comment 26: Water Level Controller Assembly
Comment 27: Temperature Sensor
Comment 28: Printed Circuit Boards (PCBs)
Comment 29: Top Load Aluminum Inner Tub Base
Comment 30: Hose Assembly
Comment 31: Electrical Connector
Comment 32: Rubber Gasket
Comment 33: Washer Door Hinge Assembly
Comment 34: Shaft Housing Assembly
Comment 35: Microswitches
Comment 36: Brackets
Comment 37: Concrete Counterweights
Comment 38: By-Product Scrap
Comment 39: Steel Wire Clamps
Comment 40: Tapping Screw
Comment 41: Washer Mixed Trim Piece, Washer Trim Piece, and Trim Piece
Comment 42: Leaf Spring and Leaf Hinge Spring
Comment 43: Metal Nameplate
Comment 44: Carbon Film Resistor
Comment 45: Check Valve
Comment 46: Thinner
Comment 47: Owner's Manual Package
Comment 48: Cold Rolled Steel (51mm x 1mm)
Comment 49: Galvanized Steel Coil (Greater Than 600mm)
Comment 50: Steel Cold-Rolled Carbon Sheet Hot Dipped Galvanized (540mm x 0.4mm x 380.7 and 526mm x 0.4mm x 575)
Comment 51: Steel Cold-Rolled Stainless Sheet Uncoated (645mm x 0.6mm x 645; 685mm x 0.6mm x 685; 720mm x 1mm x 720; and 700mm x 0.5mm x 700)
Comment 52: Stainless Steel Coil (365mm x 0.5mm)
Comment 53: U.S. Indirect Selling Expense Ratio Expense Calculation
Comment 54: Commissions on Rebates
Comment 55: Warranty Expenses
Comment 56: Corrections from Verification
Comment 57: Programming Clerical Errors in the Preliminary Determination
VII. Recommendation

[FR Doc. 2016–30150 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–DS–P

[16] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[17] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[18] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

[19] ''Top loading'' means that access to the basket is from the top of the washer.

[20] A ''PSC motor'' is an asynchronous, alternating current (AC), single phase induction motor that employs split phase capacitor technology.

[21] A ''belt drive'' refers to a drive system that includes a belt and pulleys.

[22] A ''flat wrap spring clutch'' is a flat metal spring that, when engaged, links abutted cylindrical pieces on the input shaft with the end of the concentric output shaft that connects to the drive hub.

[23] ''Front loading'' means that access to the basket is from the front of the washer.

[24] A ''controlled induction motor'' is an asynchronous, alternating current (AC), polyphase induction motor.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–828]

Certain Carbon and Alloy Steel Cut-to-Length Plate From France: Correction to the Amended Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brandon Custard or Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1823 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION: On December 2, 2016, the Department of Commerce (the Department) published in the **Federal Register** the amended preliminary determination in the less than fair value investigation for certain carbon and alloy steel cut-to-length plate from France.[1]

The Department is issuing this notice to correct two inadvertent errors in the *Amended Preliminary Determination.* First, the Department listed the case number as A–427–428. The correct case number is A–427–828. Second, the Department stated an incorrect all-others rate of 6.33 percent.[2] The correct all-others rate is 6.34 percent, as stated in the calculation memorandum accompanying the *Amended Preliminary Determination.*[3] Therefore, the Department is hereby correcting the *Amended Preliminary Determination.*

This correction to the amended preliminary determination of sales at less than fair value is issued and published in accordance with sections 733(f) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 9, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–30148 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From France: Amended Preliminary Determination of Sales at Less Than Fair Value,* 81 FR 87019 (December 2, 2016) (*Amended Preliminary Determination*).

[2] *Id.*

[3] *See* Memorandum to the file from Terre Keaton Stefanova entitled, ''Amended Preliminary Determination Margin Calculation for Dillinger France S.A. for the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from France,'' dated November 29, 2016, at 4.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE231

Endangered and Threatened Species; Recovery Plan for Oregon Coast Coho Salmon ESU

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the adoption of a Final Endangered Species Act (ESA) recovery plan (Plan) for the Oregon Coast Coho Salmon (*Oncorhynchus kisutch*) evolutionarily significant unit (ESU) which is listed as threatened under the ESA. The geographic area covered by the Plan is the Pacific Ocean and freshwater habitat (rivers, streams and lakes) from the Necanicum River near Seaside, Oregon, on the northern end to the Sixes River near Port Orford, Oregon on the south. The objective of the Plan is to provide a guidance framework for restoring the threatened Oregon Coast Coho Salmon ESU to the point where it no longer needs the protections of the ESA. As required under the ESA, the Plan contains objective, measurable delisting criteria, site-specific management actions necessary to achieve the Plan's goals, and estimates of the time and costs required to implement recovery actions. The Plan is now available.

ADDRESSES: Electronic copies of the Plan and the Response to Comments are available online at: *www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/oregon_coast/oregon_coast_recovery_plan.html.* A CD ROM of the Plan can be obtained by emailing a request to Nancy Johnson with the subject line ''CD ROM Request for Oregon Coast Coho Salmon Recovery Plan'', by phone at (503) 230–5442, by email at *nancy.johnson@noaa.gov,* or by writing to NMFS Oregon Washington Coastal Office, 1201 NE Lloyd Blvd., Suite 1100, Portland, Oregon 97232 ATTN: Recovery Coordinator.

FOR FURTHER INFORMATION CONTACT: Robert Walton, NMFS Oregon Coast Coho Salmon Recovery Coordinator, at (503) 231–2285, or *rob.walton@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. *See* 50 CFR 424.11(d)(2). 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 locally led, collaborative efforts to develop recovery plans that involve state, tribal, and Federal entities, local communities, and other stakeholders.

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. We published a Notice of Availability of the Draft Plan in **Federal Register** on October 13, 2015. (80 FR 61379). In response to requests, we extended the public comment period until December 31, 2015 to provide additional opportunity for public comment. We received extensive comments on the Proposed Plan, summarized the comments and revised the Proposed Plan based on the comments received, and this final version now constitutes the Recovery Plan for the Oregon Coast coho salmon ESU. In brief, we revised several important sections (including the delisting criteria and implementation chapters), clarified a number of issues, and added information provided by commenters, including a number of new initiatives by the state of Oregon. We have determined that this *ESA Recovery Plan for Oregon Coast Coho Salmon* meets the statutory requirements for a recovery plan.

The Final 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 Oregon Coast Coho Salmon ESU spawning range is in the Oregon Coast domain. 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 Oregon and Northern California Coasts Technical Recovery Team (TRT) included scientists from NMFS, other Federal agencies, the state of Oregon, and the private sector.

A primary task for the Oregon and Northern California Coasts Technical Recovery Team was to recommend criteria for determining when the ESU should be considered viable (*i.e.,* when they are have a low risk of extinction over a 100-year period) and when the ESU would 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.

For this Plan, we collaborated with state, tribal and Federal scientists and resource managers and stakeholders to provide technical information that NMFS used to write the Plan which is built upon state and locally-led recovery efforts.

Contents of Plan

Our goal is to restore the threatened Oregon Coast Coho Salmon ESU to the point where it is again a viable, self-sustaining member of its ecosystem and no longer needs the protections of the ESA. The Plan contains biological background and contextual information that includes description of the ESU, the planning area, and the context of the plan's development. It presents relevant information on ESU structure, biological status and proposed biological viability criteria and threats criteria for delisting.

The Plan also describes specific information on the following: Current status of Oregon Coast Coho Salmon; limiting factors and threats for the full life cycle that contributed to the species decline; recovery strategies and actions addressing these limiting factors and threats; key information needs, and a proposed research, monitoring, and evaluation program for adaptive management. For recovery strategies and actions, Chapter 6 in the Plan includes proposed actions at the ESU and strata levels. Population level information will be posted on the recovery plan Web site (see below). The Plan also describes implementation, prioritization of actions, and adaptive management at the population, strata, and ESU scales. The Plan also summarizes time and costs (Chapter 7) required to implement recovery actions. In addition to the information in the Plan, readers are referred to the recovery plan Web site for more information on all these topics: *http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/.*

How NMFS and Others Expect To Use the Plan

We will commit to implement the actions in the Plan for which we have 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 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 provides 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 future populations within the ESU 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 Chapter 4 of the Plan, which includes 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 partners described in the Plan to develop implementation schedules that provide greater specificity for recovery actions to be implemented over three-to five-year periods. This will also help promote implementation of recovery actions and subsequent implementation schedules, and will track and report on implementation progress.

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 Plan meets the requirements of ESA section 4(f) and adopt it as the *ESA Recovery Plan for Oregon Coast Coho Salmon.*

Literature Cited

McElhany, P., M.H. Ruckelshaus, M.J. Ford, T.C. Wainwright, and E.P. Bjorkstedt. 2000. Viable salmon populations and the recovery of evolutionarily significant units. U.S. Dept. of Commerce, NOAA Tech. Memo., NMFS NWFSC 42, 156 p.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 12, 2016.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–30126 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF063

Marine Mammals; File No. 20455

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Randall Wells, Ph.D., Chicago Zoological Society's Sarasota Dolphin Research Program, c/o Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236 has applied in due form for a permit to conduct research on bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before January 17, 2017.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20455 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit to take bottlenose and spotted dolphins for scientific research to continue a long-term program to evaluate the health, environmental contamination, reproduction, population structure and dynamics, acoustics, trophic patterns, life history, social structure, and anthropogenic effects on dolphins off the west coast of Florida including bays, estuaries, and offshore waters. Up to 3,000 bottlenose and 1,000 spotted dolphins would be approached annually during vessel surveys for photography, photo-identification, video recording, behavioral observation, acoustic playbacks, and passive acoustic recording, with concurrent deployment of an unmanned aircraft system for photogrammetry. Up to 250 bottlenose and 100 spotted dolphins of the above animals may also be biopsy sampled during vessel surveys annually. Up to 50 bottlenose and 25 spotted dolphins annually of the above animals may be captured for health assessments which would include biological sampling, auditory brainstem response tests, metabolic rate studies, ultrasound, x-rays, marking, tagging, tracking, and release. Calves less than 8 months of age and females with these calves would not be captured or remotely biopsy sampled. Up to 25 adults or juveniles of each species annually would be remotely satellite tagged to test the feasibility of a new experimental dorsal fin attachment method. Two unintentional mortalities of each species could occur due to capture over the life of the permit. The following species could be incidentally harassed during surveys: Green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's ridley sea turtle (*Lepidochelys kempii*), loggerhead sea turtle (*Caretta caretta*), olive ridley sea turtle (*L. olivacea*), leatherback sea turtle (*Dermochelys coriacea*), smalltooth sawfish (*Pristis pectinata*), and gulf sturgeon (*Acipenser oxyrinchus desotoi*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 9, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–30083 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE783

Draft 2016 Marine Mammal Stock Assessment Reports; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; correction.

SUMMARY: We, NMFS, published a notice of the availability of the draft 2016 Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in the **Federal Register** on October 11, 2016. Subsequent to soliciting public comment on the draft 2016 SARs, we became aware that due to technical errors in converting between electronic formats, the draft Atlantic SARs contained incorrect information in some instances. We have corrected these errors and through this notice we announce the availability of revised draft Atlantic 2016 SARs for public comment through the end of the original 90-day comment period.

DATES: Comments must be received by January 9, 2017. If members of the public need additional time to review the draft Atlantic 2016 SARs, please contact Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov.*

ADDRESSES: The 2016 draft SARs are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/sars/draft.htm.*

You may submit comments, identified by NOAA–NMFS–2016–0101, by any of the following methods:

Federal e-Rulemaking Portal: Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0101,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Send comments or requests for copies of reports to: 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, Attn: Stock Assessments.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361

et seq.) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States, including the Exclusive Economic Zone. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury (M/SI) from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. The term ''strategic stock'' means a marine mammal stock: (A) for which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the ESA. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. We published a notice of the availability of the draft 2016 Alaska, Atlantic, and Pacific regional marine mammal SARs in the **Federal Register** on October 11, 2016 (81 FR 70097).

Subsequent to soliciting public comment on the draft 2016 SARs, we were made aware that the draft Atlantic 2016 SARs contained some technical errors. A problem with our electronic file formatting conversion introducted some erroneous numbers into the document. For example, in some of the tables contained in the reports (*e.g.,* bycatch table in Atlantic white-sided dolphin), the ''years'' column and/or the ''mean combined annual mortality'' column had incorrect values. In one case, the PBR for a stock was correct in the summary table, but incorrect in the text of the individual report. Most of the errors that we discovered in the reports involved incorrect text strike-throughs, where only a portion of a number was struck out, rather than the entire value.

We immediately corrected the errors and posted a revised version of the draft Atlantic 2016 SARs on the NMFS Web site on December 1, 2016. With this **Federal Register** notice, we are notifying the public and soliciting comments on the revised version by January 9, 2017. If members of the public need additional time to review the draft Atlantic 2016 SARs, please contact Shannon Bettridge (see **FOR FURTHER INFORMATION CONTACT**).

Dated: December 12, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–30171 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF076

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; availability of evaluation of tribal resource management plan and request for comment.

SUMMARY: Notice is hereby given that the Confederated Colville Tribes have submitted a Tribal Resource Management Plan (Tribal Plan) to NMFS pursuant to the limitation on take prohibitions for actions conducted under Tribal Plans promulgated under the Endangered Species Act (ESA). The Tribal Plan specifies artificial propagation, harvest, and research and monitoring activities in the Okanogan River basin and portions of the upper Columbia River. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to whether implementation of the Tribal Plan will appreciably reduce the likelihood of survival and recovery of ESA-listed Upper Columbia River Spring Chinook salmon and steelhead.

This notice further advises the public of the availability for review of a draft Environmental Assessment of the effects of the NMFS determination on the subject Tribal Plan.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m. Pacific time on December 30, 2016.

ADDRESSES: Written comments on the proposed evaluation and pending determination should be addressed to the NMFS Sustainable Fisheries Division, 1201 NE Lloyd Blvd., Portland, OR 97232. Comments may be submitted by email. The mailbox address for providing email comments is: *OkanoganPlan.wcr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Colville Okanogan Tribal Plan. The documents are available online at *www.westcoast.fisheries.noaa.gov.* Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230–5418.

FOR FURTHER INFORMATION CONTACT: Natasha Meyers-Cherry at (503) 231–2178 or by email at *natasha.meyers-cherry@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): Endangered (but functionally extirpated in the analysis area), naturally produced Upper Columbia River spring-run.

Steelhead (*O. mykiss*): Threatened, naturally produced and artificially propagated Upper Columbia River.

Background

The Confederated Colville Tribes have submitted to NMFS a Tribal Plan for hatchery, fishery harvest, predator control, kelt reconditioning, and monitoring and evaluation activities in the Okanogan River basin, in the upper Columbia River basin in Washington State. The Tribal Plan was submitted February 4, 2014, pursuant to the Tribal ESA 4(d) Rule.

The Tribal Plan describes actions involving fisheries, hatchery, predator control, and kelt reconditioning activities (with associated monitoring and evaluation) in the Okanogan Basin and Columbia River mainstem. The Tribal Plan is intended to contribute to the recovery of the steelhead population in the Okanogan Basin, and to responsibly enhance fishing opportunity on non-listed Chinook salmon.

As required by the ESA 4(d) rule for Tribal Plans (65 FR 42481; July 10, 2000), the Secretary is seeking public comment on her pending determination as to whether the Tribal Plan Chinook salmon would appreciably reduce the likelihood of survival and recovery of the Upper Columbia River Steelhead Evolutionary Significant Unit.

Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as she deems necessary and advisable for the conservation of the species listed as threatened.

The ESA Tribal 4(d) Rule (65 FR 42481; July 10, 2000) states that the ESA section 9 take prohibitions will not apply to Tribal Plans that will not

appreciably reduce the likelihood of survival and recovery for the listed species.

Dated: December 12, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–30181 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Draft Scientific Assessment for Public Comment

AGENCY: The National Oceanic and Atmospheric Administration (NOAA) on Behalf of the United States Global Change Research Program (USGCRP)

ACTION: Notice of availability of draft scientific assessment for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is publishing this notice on behalf of the United States Global Change Research Program (USGCRP) to announce the availability of a draft assessment, the Climate Science Special Report, for a 45-day public review, collected comments will be carefully reviewed by the relevant chapter author teams. Following revision and further review, a revised draft will undergo final Federal interagency clearance.

Context: The U.S. Global Change Research Program (USGCRP) is mandated under the Global Change Research Act (GCRA) of 1990 to conduct a quadrennial National Climate Assessment (NCA). Under its current decadal strategic plan (*http://go.usa.gov/3qGU4*), USGCRP is building sustained assessment capacity. The sustained assessment supports the Nation's ability to understand, anticipate, and respond to risks and potential impacts brought about by global environmental change. As part of the ongoing NCA process, a Climate Science Special Report is being developed to inform the assessment. The last NCA from 2014 (NCA3: *http://nca2014.globalchange.gov*) and the process to develop it provided a foundation for subsequent activities and reports. This special report provides an update to the physical climate science presented in the 2014 National Climate Assessment (NCA). Specifically, the special report updates Chapter 2 and Appendices 3 and 4 of the 2014 NCA (*http://www.globalchange.gov/nca3-downloads-materials*). The report provides updated climate science findings and projections, and is an important input to the authors of the next quadrennial NCA, expected in 2018.

DATES: Comments on this draft scientific assessment must be received by 11:59 p.m. ET on 28 January 2017.

ADDRESSES: The draft USGCRP Climate Science Special Report can be accessed via the USGCRP Open Notices page (*http://www.globalchange.gov/notices*) or directly at the USGCRP Review and Comment System (*https://review.globalchange.gov/*). Registration details can be found on the review site home page, and review instructions on a dedicated special report page where comments from the public will be accepted electronically. Comments may be submitted only via this online mechanism.

All comments received through this process will be considered by the relevant chapter authors without knowledge of the commenters' identities. When the final assessment is issued, the comments and the commenters' names, along with the authors' responses, will become part of the public record and made available on *http://www.globalchange.gov.* Information submitted by a commenter as part of the registration process (such as an email address) will not be disclosed publicly.

Instructions: Response to this notice is voluntary. Responses to this notice may be used by the government for program planning on a non-attribution basis. NOAA therefore requests that no business proprietary information or copyrighted information be submitted in response to this notice. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT:

USGCRP Contact: David Dokken; telephone 202–419–3473; or email: *ddokken@usgcrp.gov.*

NOAA Contact: David Fahey; telephone 303–497–5277; or email: *david.w.fahey@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Climate Science Special Report is a product of the USGCRP, organized and led by an interagency team. The draft assessment was written by Federal and non-Federal authors identified via an Open Call for nominations (*https://www.federalregister.gov/documents/2016/03/31/2016-07208/united-states-global-change-research-program*). An interagency Federal steering committee selected authors based on their demonstrated subject matter expertise, relevant publications, and knowledge of specific topics designated in an outline included in the special report prospectus (*https://downloads.globalchange.gov/cssr/USGCRP_CSSR-Prospectus_FINAL.pdf*). The draft assessment responds to the 1990 Congressional mandate to periodically produce National Climate Assessments and to assist the nation in understanding, assessing, predicting, and responding to human-induced and natural processes of global change. The report adheres to the Information Quality Act requirements (*http://www.cio.noaa.gov/services_programs/info_quality.html*) for quality, transparency, and accessibility as appropriate for a Highly Influential Scientific Assessment (HISA).

Dated: Tuesday, December 6, 2016.

Dan Barrie,

Program Manager, Assessments Program, NOAA Climate Program Office.

Dated: December 9, 2016.

Jason Donaldson,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–30102 Filed 12–14–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF75

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; availability of evaluation of joint state/tribal hatchery plans and request for comment.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife and the Tulalip Tribes have submitted six Hatchery and Genetic Management Plans, to be considered jointly, to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plans specify the propagation of three species of salmon in the Snohomish River basin of Washington State. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce

(Secretary) as to whether implementation of the joint plans will appreciably reduce the likelihood of survival and recovery of ESA-listed Puget Sound Chinook salmon and Puget Sound steelhead.

This notice further advises the public of the availability for review of a draft Environmental Assessment of the effects of the NMFS determination on the subject joint plans.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m. Pacific time on January 17, 2017.

ADDRESSES: Written comments on the proposed evaluation and pending determination should be addressed to the Tim Tynan, NMFS Sustainable Fisheries Division, 510 Desmond Drive, Suite 103, Lacey, WA 98503. Comments may be submitted by email. The mailbox address for providing email comments is: *SnohomishHatcheries.wcr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Snohomish River hatchery programs. The documents are available on the Internet at *www.westcoast.fisheries.noaa.gov.* Comments received will also be available for public inspection, by appointment, during normal business hours by calling (360) 753–9579.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at (360) 753–9579 or by email at *tim.tynan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Puget Sound.

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Puget Sound.

Background

The Washington Department of Fish and Wildlife and the Tulalip Tribes have submitted to NMFS plans for six jointly operated hatchery programs in the Snohomish River region. The plans were submitted from December 2012 to September 2016, pursuant to limit 6 of the 4(d) Rule for ESA-listed salmon and steelhead. The hatchery programs release ESA-listed Chinook salmon and non-listed coho and fall chum salmon into the Snohomish River basin and nearby.

As required by the ESA 4(d) Rule (65 FR 42422; July 10, 2000, as updated in 70 FR 37160; June 28, 2005), the Secretary is seeking public comment on her pending determination as to whether the joint plans for hatchery programs in the Snohomish River basin would appreciably reduce the likelihood of survival and recovery of the ESA-listed Puget Sound salmon and steelhead.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as she deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) Rule (65 FR 42422; July 10, 2000, as updated in 70 FR 37160; June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 6 of the updated 4(d) Rule (50 CFR 223.203(b)(6)) further provides that the prohibitions of paragraph (a) of the updated 4(d) Rule (50 CFR 223.203(a)) do not apply to activities associated with a joint state/tribal artificial propagation plan provided that the joint plan has been determined by NMFS to be in accordance with the salmon and steelhead 4(d) Rule (65 FR 42422; July 10, 2000, as updated in 70 FR 37160; June 28, 2005).

Dated: December 12, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–30180 Filed 12–14–16; 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; extension of public comment period.

SUMMARY: We, NMFS, announce the extension of the comment period for the *Proposed Endangered Species Act (ESA) Recovery Plan for Snake River Spring/Summer Chinook Salmon and Snake River Steelhead* (Proposed Plan) published on October 27, 2016. 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. The close of the comment period is being extended—from December 27, 2016, to February 9, 2017—to provide additional opportunity for public comment.

DATES: The deadline for receipt of comments on the Proposed Plan published on October 27, 2016 (81 FR 74770), is extended to close of business on February 9, 2017.

ADDRESSES: You may submit comments on the Proposed Plan by the following methods:

- *Electronic Submissions:* Submit all electronic public comments via: *nmfs_snakeriver_ssch_st_plan.wcr@noaa.gov.* Please include ''Comments on Snake River Spring/Summer Chinook and Steelhead Recovery Plan'' in the subject line of the email.
- *Facsimile:* (503) 230–5441.
- *Mail:* Rosemary Furfey, National Marine Fisheries Service, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232.

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

Electronic copies of the Proposed Plan are available at: *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 mail to: *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.*

SUPPLEMENTARY INFORMATION:

Extension of Comment Period

On October 27, 2016 (81 FR 74770), we (NMFS) published in the **Federal Register** a request for public comment on the *Proposed Endangered Species Act Recovery Plan for Snake River Spring/Summer Chinook Salmon and Snake River Steelhead.* The public comment period for this action is set to end on December 27, 2016. The comment period is being extended through February 9, 2017, to provide additional opportunity for public comment.

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.*). 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, including the two species addressed in the Proposed Plan. 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 which 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 state, federal, 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 Recovery 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.

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.

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 forum for the plan. After considering the public comments, 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*) a summary of, and responses to, the comments received, along with electronic copies of the final plan and its appendices.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 12, 2016.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–30163 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF077

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement; request for comments.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice announces that NMFS intends to obtain information necessary to prepare an Environmental Impact Statement (EIS) for salmon and steelhead hatchery programs currently operating in the Upper Willamette River Basin of Oregon. NMFS is also requesting public review and comment on four Hatchery and Genetic Management Plans (HGMPs) submitted by the U.S. Army Corps of Engineers (USACE) for evaluation and determination under Limit 5 of the Endangered Species Act (ESA) 4(d) rule for threatened salmon and steelhead. The HGMPs specify the propagation of hatchery spring Chinook salmon released in the North Santiam, South Santiam, McKenzie, Middle Fork Willamette, Coast Fork Willamette, and Molalla Rivers.

NMFS provides this notice to: (1) Advise other agencies and the public of its plans to analyze effects related to the action, and (2) obtain suggestions and information that may be useful to the scope of issues and alternatives to include in the EIS. This notice further serves to notify the public of the availability of the four HGMPs for comment prior to a decision by NMFS on whether to approve the proposed hatchery programs.

DATES: Written or electronic scoping comments must be received at the appropriate address or email mailbox (see **ADDRESSES**) no later than 5 p.m. Pacific Time January 30, 2017.

ADDRESSES: Submit your comments by either of the following methods:

- Email to the following address: *WillametteHatcheryEIS.wcr@noaa.gov* with the following identifier in the subject line: Comments on Intent to Prepare the Willamette Hatchery EIS.
- Mail or hand-deliver to NMFS Sustainable Fisheries Division, 2900 NW. Stewart Parkway, Roseburg, OR 97471.
- Fax to (541) 957–3386.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are part of the public record and NMFS will generally post for public viewing on *www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Additional information to assist with consideration of the notice of intent, as well as the HGMPs themselves, is available on the Internet at *www.westcoast.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lance Kruzic, NMFS, by phone at (541) 957–3381, or email to *lance.kruzic@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-listed Species Covered in This Notice

Chinook salmon (*O. tshawytscha*): threatened, naturally-produced and specified artificially-produced stocks in the Upper Willamette ESU.

Winter steelhead (*O. mykiss*): threatened, naturally-produced in the Upper Willamette distinct population segment.

Background

The USACE has submitted four HGMPs for spring Chinook salmon hatchery programs in the Upper

Willamette River to NMFS, pursuant to Limit 5 of the 4(d) rule for salmon and steelhead promulgated under the ESA (65 FR 42422; July 10, 2000). Before a decision is made by NMFS on these HGMPs, NEPA requires Federal agencies to conduct environmental analyses of proposed actions to fully consider their effects on the human environment. NMFS's action of evaluating USACE's HGMPs under Limit 5 of the 4(d) Rule is a major Federal action subject to environmental review under NEPA. Therefore, NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives, recommendations for relevant analysis methods, and information associated with impacts of the alternatives to the resources listed below or other relevant resources.

The hatchery programs considered in the analysis are those rearing and releasing North Santiam, South Santiam, McKenzie, and Middle Fork Willamette hatchery spring Chinook salmon. The EIS will also consider the potential effects of the current summer steelhead program. Hatchery fish are released into the following waterbodies: North Santiam River, South Santiam River, McKenzie River, Middle Fork Willamette River, Molalla River, and Coast Fork Willamette River. A list of all of the hatchery programs, including links to the HGMPs undergoing public comment, is available online (see **ADDRESSES**).

NMFS will perform an environmental review of the hatchery salmon and steelhead programs and prepare an EIS that will evaluate potentially significant direct, indirect, and cumulative impacts on the following resources identified to have a potential for effect from the proposed action:

- Water quantity and water quality
- Fish and wildlife species and their habitats
- Socioeconomics
- Environmental Justice
- Cumulative impacts

NMFS will rigorously explore and objectively evaluate a full range of reasonable alternatives in the EIS, including the proposed action (implementation of USACE's HGMPs) and a no-action alternative. Additional alternatives could include a reduction in artificial production and/or elimination of the hatchery programs.

For all potentially significant impacts, the EIS will identify measures to avoid, minimize, and mitigate the impacts, where feasible, to a level below significance.

Request for Comments

NMFS provides this notice to: (1) advise other agencies and the public of its plans to analyze effects related to the action, and (2) obtain suggestions and information that may be useful to the scope of issues and the full range of alternatives to include in the EIS.

NMFS invites comment from all interested parties to ensure that the full range of issues related to hatchery salmon and steelhead are identified. Comments should be as specific as possible, with recommendations to address identified issues.

Written comments concerning the proposed action and the environmental review should be directed to NMFS as described above (see **ADDRESSES**). All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

Authority

The environmental review of the hatchery salmon and steelhead programs will be conducted in accordance with requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS.

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422; July 10, 2000, as updated in 70 FR 37160; June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 5 of the updated 4(d) rule (50 CFR 223.203(b)(5)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with artificial propagation programs provided that an HGMP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422; July 10, 2000, as updated in 70 FR 37160; June 28, 2005).

Dated: December 12, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–30182 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF083

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a two-day meeting of its Joint Ad Hoc Reef Fish Headboat and Ad Hoc Red Snapper Charter For-Hire Advisory Panels.

DATES: The meeting will convene on Monday, January 9, 2017, from 9 a.m. to 5 p.m. and Tuesday, January 10, 2017, from 9 a.m. to 5 p.m. EDT.

ADDRESSES: The meeting will take place at the Hyatt Centric French Quarter Hotel, located at 800 Iberville Street, New Orleans, LA 70112; telephone: (504) 586–0800.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; *assane.diagne@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, January 9, 2017, 9 a.m. to 5 p.m. and Tuesday, January 10, 2017, 9 a.m. to 5 p.m., EDT

I. Adoption of Agenda
II. Overview of the For-Hire Sector
III. Summary of Current Reef Fish Amendments 41 and 42
IV. Decisions on For-Hire Management Programs
  a. Type of Management Approaches Considered
  b. Timing and Number of For-Hire Management Programs
  c. Prioritization of Reef Fish Species to Included
  d. Apportionment of For-Hire Quotas between Programs (if necessary)
  e. Adjustments to Individual Allocations
  f. Participation in Management

Programs

g. Management Program Design Elements (if warranted)

V. Overall Recommendations to the Council and Wrap-Up

—Meeting Adjourns—

You may register for Joint Ad Hoc Reef Fish Headboat and Ad Hoc Red Snapper Charter For-Hire Advisory Panel meeting on January 9–10, 2017 at: *https://attendee.gotowebinar.com/register/4361231942417618435.*

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''AP meeting–2017–01''.

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take 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 Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: December 9, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–30088 Filed 12–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Defense Acquisition University Board of Visitors. This meeting will be open to the public.

DATES: Wednesday, February 1, 2017, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: DAU South Huntsville Campus, 7115 Old Madison Pike, Executive Classroom #1, Huntsville, Alabama 35806.

FOR FURTHER INFORMATION CONTACT: Caren Hergenroeder, Protocol Director, DAU. Phone: 703–805–5134. Fax: 703–805–5940. Email: *caren.hergenroeder@dau.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest.

Agenda

9:00 a.m. Welcome and Announcements
9:05 a.m. DAU South Overview
9:20 a.m. Dialogue with Guests Representatives
12:00 p.m. Lunch
1:00 p.m. DAU Update
2:30 p.m. Transition Planning
3:30 p.m. Summary Discussion
4:00 p.m. Adjourn

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Caren Hergenroeder at 703–805–5134.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Acquisition University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Acquisition University Board of Visitors.

All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Acquisition University Board of Visitors until its next meeting.

Committee's Designated Federal Officer or Point of Contact: Ms. Christen Goulding, 703–805–5412, *christen.goulding@dau.mil.*

Dated: December 12, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–30167 Filed 12–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–31]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Young, DSCA/SA&E–RAN, (703) 697–9107.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–31 with attached Policy Justification and Sensitivity of Technology.

Dated: December 12, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 07 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-31, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance for the Kingdom of Saudi Arabia for defense articles and services estimated to cost $3.51 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

For J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 16–31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* The Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$2.60 billion
Other	$ .91 billion
Total	$3.51 billion

(iii) *Description and Quantity or Quantities of Articles or Services under consideration for Purchase:*

Major Defense Equipment (MDE):

Forty-eight (48) CH–47F Chinook Cargo Helicopters

One hundred twelve (112) T55–GA–714A Engines (ninety-six (96) installed, sixteen (16) spares)

One hundred sixteen (116) Embedded Global Positioning System (GPS) Inertial Navigation Systems (EGI) (ninety-six (96) installed, twenty (20) spares)

Fifty-eight (58) AN/AAR–57 Common Missile Warning Systems (CMWS) (forty- eight (48) installed, ten (10) spares)

Forty-eight (48) M240H 7.62mm Machine Guns with spare parts

Non-MDE: This request also includes the following Non-MDE: M134D Mini-Guns or equivalent type guns with support equipment and training; Aircraft Survivability Equipment (AN/APR–39A(V) l/4, AN/AVR–2B, AN/ARC–231, AN/ARC–201D, AN/APX–123A, ARN–147 VOR/ILS, ARN–153 TACAN, APN–209, IDM–401 Improved Data Modem, and AN/ARC–220); Infrared Signature Suppression System (IRSS); Fast Rope Insertion Extraction System (FRIES); Extended Range Fuel System (ERPS); Ballistic Armor Protection System; facilities; air worthiness support; spares and repair parts; communications equipment; personnel training and training equipment; site surveys; tool and test equipment; Ground Support Equipment (GSE); repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (SR–B–ZAG)

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(vii) *Prior Related Case, if any:* None

(viii) *Date Report Delivered to Congress:* December 7, 2016

*as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—CH–47F Chinook Cargo Helicopters:

The Kingdom of Saudi Arabia has requested a possible sale of:

Major Defense Equipment (MDE):

Forty-eight (48) CH–47F Chinook Cargo Helicopters

One hundred twelve (112) T55–GA–714A Engines (ninety-six (96) installed, sixteen (16) spares)

One hundred sixteen (116) Embedded Global Positioning System (GPS) Inertial Navigation Systems (EGI) (ninety-six (96) installed, twenty (20) spares)

Fifty-eight (58) AN/AAR–57 Common Missile Warning Systems (CMWS) (forty-eight (48) installed, ten (10) spares)

Forty-eight (48) M240H 7.62mm Machine Guns with spare parts

Non-MDE: This request also includes the following Non-MDE: M134D Mini-Guns or equivalent type guns with support equipment and training; Aircraft Survivability Equipment (AN/APR–39A(V) l/4, AN/AVR–2B, AN/ARC–231, AN/ARC–201D, AN/APX–123A, ARN–147 VOR/ILS, ARN–153 TACAN, APN–209, IDM–401 Improved Data Modem, and AN/ARC–220); Infrared Signature Suppression System (IRSS); Fast Rope Insertion Extraction System (FRIES); Extended Range Fuel System (ERPS); Ballistic Armor Protection System; facilities; air worthiness support; spares and repair parts; communications equipment; personnel training and training equipment; site surveys; tool and test equipment; Ground Support Equipment (GSE); repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support. The total overall estimated value is $3.51 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner which has been and continues to be a leading contributor of political stability and economic progress in the Middle East. This sale will increase the Royal Saudi Land Forces Aviation Command's (RSLFAC) interoperability with U.S. forces and convey U.S. commitment to Saudi Arabia's security and armed forces modernization.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The proposed sale of the CH–47F aircraft will improve Saudi Arabia's heavy lift capability. Saudi Arabia will use this enhanced capability to strengthen its homeland defense and deter regional threats. Saudi Arabia will have no difficulty absorbing these aircraft into its armed forces.

The prime contractors will be The Boeing Military Aircraft Company, Ridley Park, Pennsylvania, and Honeywell Aerospace Company, Phoenix, Arizona. There are no known offset agreements in connection with this potential sale.

Implementation of this sale will require up to sixty (60) U.S. Government and contractor representatives to travel to Saudi Arabia for up to sixty (60) months for equipment de-processing, fielding, system checkout, training, and technical logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The CH–47F Chinook Cargo Helicopter is a medium-lift helicopter equipped with the Common Avionics Architecture System (CAAS) cockpit, which provides aircraft system, flight, mission, and communication management systems, five multifunction displays, two general purpose processor units, two control display units and two data concentrator units. The navigation system will have two Embedded Global Positioning System/Inertial Navigation System (GPS/INS), two Digital Advanced Flight Control Systems (DAFCS), one ARN–149 Automatic Direction Finder, one ARN–147 Very High Frequency Omnidirectional Range/Instrument Landing System (VOR/ILS) marker beacon system, one ARN–153 Tactical Airborne Navigation (TACAN) system, two air data computers, and one Radar Altimeter system. The aircraft survivability equipment includes the AN/APR–39A(V) l/4 Radar Signal Detecting Set, and the AN/AAR–57 Common Missile Warning System.

The Embedded Global Positioning System/Inertial Navigation System (GPS/INS) is SECRET. The AN/AAR–57 Common Missile Warning System

(CMWS) is CONFIDENTIAL. Releasable technical manuals for operation and maintenance are SECRET. The AN/APR–39A(V) l/4 Series Radar Detecting Set (RDS) is SECRET. The AN/AVR–2B, Laser Warning Set is CONFIDENTIAL. Releasable technical manuals for operation and maintenance are SECRET. The AN/ARC–23l (V)(C) is UNCLASSIFIED. The AN/ARC–201D Single Channel Ground and Airborne Radio System (SINCGARS), performance capabilities, Electronic Countermeasures/Electronic Counter Counter-Measures (ECM/ECCM) specifications and Engineering Change Orders (ECOs) are SECRET. The AN/APX–123A, Identification Friend or Foe (IFF) Transponder is UNCLASSIFIED. The AN/ARN–147, Very High Frequency Omni Ranging/Instrument Landing System (VOR/ILS) receiver is UNCLASSIFIED. The AN/ARC–220 is UNCLASSIFIED. The KN–77 is UNCLASSIFIED. The AN/PYQ–10 (C) Simple Key Loader (SKL) is UNCLASSIFIED. The TSEC KY–58 voice secure equipment is CONFIDENTIAL if software fill is installed. The TSEC KY–100 voice secure equipment is used with the FM Command Radio to provide secure two-way communication. It is Communications Security (COMSEC) Equipment and is classified SECRET if software fill is installed. The AN/AVS–6/7(V)l is UNCLASSIFIED.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness.

3. determination has been made that Saudi Arabia can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Kingdom of Saudi Arabia.

[FR Doc. 2016–30164 Filed 12–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–61]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Young, DSCA/SA&E–RAN, (703) 697–9107.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–61 with attached Policy Justification.

Dated: December 12, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 07 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-61, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Qatar for defense articles and services estimated to cost $81 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Dep Dir CA

For J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 16–61

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Qatar

(ii) *Total Estimated Value:*

Major Defense Equipment (MDE) *.	$51 million
Other	$30 million
Total	$81 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*
Major Defense Equipment (MDE):
Four (4) F117–PW–100 C–17 Engines (spares)
Non-MDE includes:
Quick Engine Change (QEC) Kits, Engine Transport Trailers, Engine Platforms, Engine Trailers, and other various support.

(iv) *Military Department:* Air Force (LAC)

(v) *Prior Related Cases, if any:* QA–D–QAB

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* December 7, 2016

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Qatar—Spare C–17 Engines and Equipment

The Government of Qatar has requested a possible sale of the following in support of its eight (8) C–17 Globemaster III aircraft procured under a Direct Commercial Sale (DCS): four (4) spare F117–PW–100 engines, Quick Engine Change (QEC) Kits, Engine Transport Trailers, Engine Platforms, Engine Trailers, and other various support. The estimated total program cost is $81 million.

The proposed sale would contribute to the foreign policy and national security of the U.S. by helping to improve the security of an important regional ally. Qatar is a vital partner for political stability and economic progress in the Middle East. The C–17 provides a heavy airlift capability and complements the normal, day-to-day operations of Qatar's C–130J fleet. Qatar will have no difficulty absorbing this equipment into its armed forces.

The proposed sale would enhance Qatar's ability to operate and maintain its C–17s, supporting its capability to provide humanitarian aid in the Middle East and Africa region and support its troops in coalition operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be the Boeing Corporation of Chicago, Illinois. The U.S. Government is not aware of any known offsets associated with this sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not alter current assignment of additional U.S. Government or contractor representatives to Qatar. The number of U.S. Government and contractor representatives required in Qatar to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There is no adverse impact on U.S. defense readiness as a result of this proposed sale. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Qatar.

[FR Doc. 2016–30143 Filed 12–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–62]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Young, DSCA/SA&E–RAN, (703) 697–9107.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–62 with attached Policy Justification and Sensitivity of Technology.

Dated: December 12, 2016.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 07 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-62, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Qatar for defense articles and services estimated to cost $700 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James Waterman
Dep Dir (A)

for J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 16–62

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Qatar

(ii) *Total Estimated Value:*

Major Defense Equipment (MDE)*.	$ 0 million
Other	$700 million
Total	$700 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): None

Non-MDE includes: Follow-on support for eight (8) C–17 aircraft, to include contract labor for sustainment engineering, on-site COMSEC support, Quality Assurance, support equipment repair, supply chain management, spares replenishment, maintenance, back shop support, and centralized maintenance support/associated services. Required upgrades will include fixed installation satellite antenna, Mode 5+ installation and sustainment, Automatic Dependent Surveillance-Broadcast Out, and two special operations loading ramps.

(iv) *Military Department:* Air Force (QAI)

(v) *Prior Related Cases, if any:* QA–D–QAB

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 7, 2016

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Qatar—Continuation of Logistics Support Services and Equipment

The Government of Qatar has requested a possible sale of continued logistics support for eight (8) C–17 aircraft which will include contract labor for sustainment engineering, on-site COMSEC support, Quality Assurance, support equipment repair, supply chain management, spares replenishment, maintenance, back shop support, and centralized maintenance support/associated services. Required upgrades will include fixed installation satellite antenna, Mode 5+ installation and sustainment, Automatic Dependent Surveillance-Broadcast Out, and two special operations loading ramps. The estimated total cost is $700 million.

The proposed sale contributes to the foreign policy and national security of the U.S. by helping to improve the security of an important regional ally. Qatar is a vital partner for political stability and economic progress in the Middle East. The C–17 provides a heavy airlift capability and complements the normal, day-to-day operations of the Government of Qatar's C–130J fleet. Qatar will have no difficulty absorbing this equipment into its armed forces.

The proposed sale will enhance Qatar's ability to operate and maintain its C–17s, supporting its capability to provide humanitarian aid in the Middle East and Africa region and support its troops in coalition operations. Qatar's current contract supporting its C–17 fleet will expire in September of 2017.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be the Boeing Corporation of Chicago, Illinois. The U.S. Government is not aware of any known offsets associated with this sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this sale will require the assignment of approximately five additional U.S. Government and approximately 50 contractor representatives to Qatar.

There will be no adverse impact on U.S. defense readiness, as a result of this proposed sale.

Transmittal No. 16–62

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) Of the Arms Export Control Act

Annex A

Item No. vii

(vii) *Sensitivity of Technology:*

1. This sale will involve the release of sensitive technology to Qatar in the performance of services to sustain eight (8) Qatar C–17 aircraft. While much of the below equipment supporting the C–17 is not new to the country, there will be replenishment spares of the below sensitive technologies purchased to support the fleet.

2. The Force 524D is a 24-channel SAASM based Global Positioning System (GPS) receiver, with precise positioning service (PPS) capability built upon Trimble's next generation OPS technology. The Force 524D retains backward compatibility with the proven Force 5GS, while adding new functionality to interface with digital antenna electronics, to significantly improve anti-jam (AJ) performance. The host platform can select the radio frequency (RF) or digital antenna electronics (DAE) interface. In the digital mode, the Force 524D is capable of controlling up to 16 independent beams. The hardware and software associated with the 524D receiver card is UNCLASSIFIED.

3. The C–17 aircraft will be equipped with the GAS–1, which is comprised of the Controlled Reception Pattern Antennas (CRPA), with the associated wiring harness and the Antenna Electronics (AE)-1, to provide AJ capability. The hardware is UNCLASSIFIED.

4. The KIV–77 is the crypto applique for Mode V Identification Friend of Foe (IFF). The hardware is UNCLASSIFIED and COMSEC controlled.

5. Software, hardware, and other data/information, which is classified or sensitive, is reviewed prior to release to protect system vulnerabilities, design data, and performance parameters. Some end-item hardware, software, and other data identified above are classified at the CONFIDENTIAL and SECRET level. Potential compromise of these systems is controlled through management of the basic software programs, of highly sensitive systems and software-controlled weapon systems, on a case-by-case basis.

6. Qatar is both willing and able to protect United States classified military information. Qatari physical and document security standards are equivalent to U.S. standards. Qatar has demonstrated its willingness and capability to protect sensitive military technology and information released to its military in the past.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software source code in this proposed sale, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of systems with similar or advanced capabilities. The benefits to be derived from this sale in the furtherance of the U.S. foreign policy and national security objectives, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology, where revealed to unauthorized persons.

8. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Qatar.

[FR Doc. 2016–30159 Filed 12–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0140]

Agency Information Collection Activities; Comment Request; Teacher Verification Form for Title II Scholarship Recipients

AGENCY: Department of Education (ED), Office of Postsecondary Education (OPE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 13, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0140. 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 Karen Wilson, 202–453–6186.

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: Teacher Verification Form for Title II Scholarship Recipients.

OMB Control Number: 1840–0753.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 1,000.

Total Estimated Number of Annual Burden Hours: 1,000.

Abstract: In order to implement the requirements of the statute, confidential information on scholarship recipients will be collected. Specifically, the institution of higher education (IHE) will report to ED the name, address, social security number, and date of birth for each recipient at the time a scholarship award is made. These data will be used to track students after the completion of their studies (or withdrawal from the program) to ascertain whether they are fulfilling the teaching requirement of their award.

Any data that is required and maintained by ED itself will be maintained in accordance with the Privacy Act of 1974, as amended. To assure that sensitive data about scholarship recipients are not compromised, all data—whether submitted electronically or as hard copy—will be maintained in a secure location. Access to these data will be limited only to staff who are directly responsible for working with the Teacher Quality Enhancement (TQE) Program and this information is only available onsite at the TQE office via desktop computer.

As noted in the Privacy Act of 1974 (5 U.S.C. 552a), the authority for collecting the requested information from and about TQE scholarship recipients is Title II, Section 204(e) of the Higher Education Act of 1965, as amended, and 31 U.S.C. Chapter 37. IHE students are advised that participation in the Teacher Quality Enhancement Grants scholarship program is voluntary and that giving the Department their Social Security Numbers (SSNs) is voluntary, but they must provide the requested information, including their SSNs, to participate. The information will be used to ensure that recipients of scholarships provided with funds under Title II of the Higher Education Act subsequently: (1) Complete a teacher education program and teach in a high-need school of a high-need local educational agency for a period of time equivalent to the period for which the recipient received scholarship assistance; or (2) repay the amount of the scholarship. The information in students' records may be disclosed to third parties as authorized under routine uses in the appropriate systems of records, either on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

Dated: December 12, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–30097 Filed 12–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research Program—Expansion Grants

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Education Innovation and Research Program—Expansion Grants.

Notice inviting applications for new awards for fiscal year (FY) 2017.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411A (Expansion Grants).

DATES: *Applications Available:* December 19, 2016.

Deadline for Notice of Intent to Apply: February 13, 2017.

Deadline for Transmittal of Applications: April 13, 2017.

Deadline for Intergovernmental Review: June 13, 2017.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Education Innovation and Research (EIR) Program, established under section 4611 of the Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA), provides funding to create, develop, implement, replicate, or take to scale

entrepreneurial, evidence-based, field-initiated innovations to improve student achievement (as defined in this notice) and attainment for high-need students (as defined in this notice); and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent educational challenges and to support the expansion of effective solutions to serve substantially larger numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding that an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers. Applicants proposing innovative practices (as defined in this notice) that are supported by limited evidence can receive relatively small grants to support the development, iteration and initial evaluation of the practices; applicants proposing practices supported by evidence from rigorous evaluations, such as large randomized controlled trials (as defined in this notice), can receive larger grant awards to support expansion across the country. This structure provides incentives for applicants to: (1) Explore new ways of addressing persistent challenges that other educators can build on and learn from; (2) build evidence of effectiveness of their practices; and (3) replicate and scale successful practices in new schools, districts, and states while addressing the barriers to scale, such as cost structures and implementation fidelity.

All EIR projects are expected to generate information regarding their effectiveness in order to inform EIR grantees' efforts to learn about and improve upon their efforts, and to help similar, non-EIR efforts across the country benefit from EIR grantees' knowledge. By requiring that all grantees conduct independent evaluations of their EIR projects, EIR ensures that its funded projects make a significant contribution to improving the quality and quantity of information available to practitioners and policymakers about which practices improve student achievement, for which types of students, and in what contexts.

The Department of Education (Department) awards three types of grants under this program: ''Early-phase'' grants, ''Mid-phase'' grants, and ''Expansion'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale that funded projects should reach, and, consequently, the amount of funding available to support each type of project.

Expansion grants provide funding for grantees to scale projects that are supported by strong evidence (as defined in this notice) for at least one population and setting and thus are ready to be implemented at the national level (as defined in this notice). This notice invites applications for Expansion grants only. The notices inviting applications for Early-phase and Mid-phase grants are published elsewhere in this issue of the **Federal Register**.

Background: EIR builds on seven years of investments—over $1.4 billion, matched by over $200 million in private sector resources—from the Department's Investing in Innovation (i3). i3 has generated new information regarding effective educational practices and increased evaluators' capacity to conduct rigorous evaluations of student learning outcomes that provide actionable information for educators. EIR is designed expand on the successes of i3 to offer new opportunities for States, districts, schools, and educators to develop innovations and scale effective practices that address their most pressing challenges.

EIR Expansion grants are expected to scale practices that have prior evidence of effectiveness, in order to improve outcomes for high-need students. They should also be expected to generate important information about educational practices (*e.g.,* in what contexts does the practice work best? Where does it not work as well? What components of the practice are most critical to its success?). Expansion grants are uniquely positioned to help answer critical questions about the process of scaling a practice across geographies (*e.g.,* how does or should the cost structure of a practice change as it scales? What are ways to facilitate implementation fidelity without making scaling too onerous?). Given that Expansion grants (as with all EIR grants) focus on improving outcomes for high-need students, they are a critical resource for practitioners and policymakers in addressing educational disparities across the nation. Identifying and describing the core elements of the EIR-supported practices is a basic expectation for all Expansion grantees, in order to support adoption or replication by other entities. Evaluations of Expansion grants must be conducted in a variety of contexts and for a variety of students in order to determine the context(s) and population(s) for which the EIR-supported practice is most effective and how to effectively adapt the practice for these contexts and populations. An Expansion grantee's EIR-supported evaluation must examine the cost effectiveness of its practices and identify potential obstacles and success factors to scaling that would be relevant to other organizations. We expect that Expansion grantees will work toward sustaining their projects and continuing to scale successful practices after the EIR grant period ends; EIR grantees can use their evaluations to assess how their EIR-funded practices could be successfully reproduced and sustained.

The FY 2017 EIR Expansion competition includes two absolute priorities that all applicants must address. Applicants must propose practices with strong evidence of prior effectiveness that are designed to improve student achievement and attainment in areas of critical national need and, in doing so, to serve high-need students. Given the recent increase in rigorous education research that is relevant to education practitioners,[1] and ESSA's focus on building and utilizing evidence-based practices, the Department includes these broad priorities to ensure that EIR takes to scale interventions supported by rigorous evidence, and that these interventions target the most pressing challenges and the students most at risk.

Priorities: This competition includes two absolute priorities. Absolute Priority 1 is from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Supplemental Priorities). We are establishing Absolute Priority 2 in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). These absolute priorities will apply to the FY 2017 EIR Expansion competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Absolute Priorities: These priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet both of these priorities.

These priorities are:

Absolute Priority 1—Supporting High-Need Students.

Under this priority, we provide funding to projects that are designed to

[1] Kantrowitz, Barbara, (2014). ''Scientists Bring New Rigor to Education Research.'' Scientific American, July 15, 2014, *www.scientificamerican.com/article/scientists-bring-new-rigor-to-education-research/.*

improve academic outcomes for high-need students.

Absolute Priority 2—Evidence-Driven Practices

Under the priority, we provide funding to projects that meet the evidence standard established in Section III.3. for this competition and are designed to improve student achievement and attainment in areas of critical national need.

Definitions

The definitions of ''national level,'' and ''nonprofit,'' are from 34 CFR 77.1. The definitions for ''high-need students'' and ''regular high school diploma'' are from the Supplemental Priorities. The definitions of ''local educational agency'' and ''state educational agency'' are from Section 8101 of the ESEA, as reauthorized by ESSA. We are establishing the definitions for ''experimental study'' ''high-minority school,'' ''independent evaluation,'' ''large sample,'' ''logic model,'' ''meets What Works Clearinghouse Evidence Standards without reservations,'' ''meets What Works Clearinghouse Standards with reservations,'' ''multi-site sample,'' ''practice,'' ''randomized controlled trial,'' ''regression discontinuity design study,'' ''relevant finding,'' ''relevant outcome,'' ''rural local educational agencies,'' ''single-case design study,'' ''strong evidence,'' and ''student achievement'' for the FY 2017 grant competition only, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Experimental study means a study, such as a randomized controlled trial (RCT) (as defined in this notice), that is designed to compare outcomes between two groups of individuals that are otherwise equivalent except for their assignment to either a treatment group receiving a practice or a control group that does not. In some circumstances, a finding from a regression discontinuity design study (RDD) (as defined in this notice) or findings from a collection of single-case design studies (SCDs) (as defined in this notice) may be considered equivalent to a finding from an RCT. RCTs and RDDs, and collections of SCDs, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations (as defined in this notice).

High-minority school means a school as that term is defined by a local educational agency (LEA) (as defined in this notice), which must define the term in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(g)(1)(B) of the Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA). The applicant must provide the definition(s) of high-minority schools used in its application.

High-need students means students who are at risk for educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma (as defined in this notice), who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice and are implementing it.

Large sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that each contain, on average, 10 or more students (or other single analysis units, regardless of whether these single analysis units are disaggregated in the analysis of outcomes for the groups). Multiple studies can cumulatively be used to meet the multi-site sample (as defined in this notice) and large sample requirements of strong evidence, as long as each study meets the other requirements of the particular level of evidence (*i.e.,* strong evidence).

Local educational agency means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also known as a theory of action) means a reasonable conceptual framework that identifies key components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes (as defined in this notice)) and describes the theoretical and operational relationships among the key components and outcomes.

Meets What Works Clearinghouse Evidence Standards without reservations is the highest possible rating for a study finding reviewed by the What Works Clearinghouse (WWC). Studies receiving this rating provide the highest degree of confidence that an estimated effect was caused by the practice studied. Experimental studies (as defined in this notice) may receive this highest rating. These standards are described in the WWC Procedures and Standards Handbooks, Version 3.0, which can be accessed at *http://ies.ed.gov/ncee/wwc/Handbooks.*

Meets What Works Clearinghouse Evidence Standards with reservations is the second-highest rating for a study finding reviewed by the What Works Clearinghouse (WWC). Studies receiving this rating provide a reasonable degree of confidence that an estimated effect was caused by the practice studied. Both experimental studies (as defined in this notice) (such as randomized controlled trials with high rates of sample attrition) and quasi-experimental design studies (as defined in this notice) may receive this rating if they establish the equivalence of the treatment and comparison groups in key baseline characteristics. These standards are described in the WWC Procedures and Standards Handbooks, Version 3.0, which can be accessed at *http://ies.ed.gov/ncee/wwc/Handbooks.*

Multi-site sample means more than one site, where site can be defined as an LEA, locality, or State. A sample could be multi-site if it includes campuses in two or more localities (*e.g.,* cities or counties), even if the campuses all belong to the same LEA or the same postsecondary school system. Multiple studies can cumulatively be used to meet the multi-site sample and the large sample (as defined in this notice) requirements of strong evidence, as long as each study meets the other requirements for strong evidence.

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Practice means an activity, strategy, or intervention included in a project. Evidence may pertain to an individual practice, or to a combination of practices (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Randomized controlled trial (RCT) means a study that employs random assignment of, for example, students, teachers, classrooms, or schools to receive the practice being evaluated (the treatment group) or not to receive the practice (the control group). The estimated effectiveness of the practice is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations.

Regression discontinuity design study (RDD) means a study that assigns the practice being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes. The effectiveness of the practice is estimated for individuals who barely qualify to receive that component. These studies, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations.

Regular high school diploma means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Relevant finding means a finding from a study regarding the relationship between (a) an activity, strategy, or intervention included as a practice of the logic model (as defined in this notice) for the proposed project, and (b) a student outcome or other relevant outcome included in the logic model for the proposed project.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed practice is designed to improve; consistent with the specific goals of a program.

Rural local educational agencies means local educational agencies with an urban-centric district locale code of 32, 33, 41, 42, or 43, which can be found at the following link: *https://nces.ed.gov/ccd/ccdLocaleCodeDistrict.asp.*

Single-case design study (SCD) means a study that use observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment. According to the What Works Clearinghouse Single Case Design Pilot Standards, a collection of these studies, depending on design and implementation (*e.g.,* including a sufficient number of cases and of data points per condition), can Meet What Works Clearinghouse Evidence Standards without reservations.

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Strong evidence means the following conditions are met: (a) There is at least one experimental study (*e.g.,* a randomized controlled trial) of the effectiveness of the practice that has a relevant finding (as defined in this notice) that Meets What Works Clearinghouse Evidence Standards without reservations (as defined in this notice) (*e.g.,* a randomized controlled trial with low rates of sample attrition overall and between the treatment and control groups); (b) the relevant finding in the study described in paragraph (a) is of a statistically significant and positive (*i.e.,* favorable) effect on a student outcome or other relevant outcome, with no statistically significant and overriding negative (*i.e.,* unfavorable) evidence on that practice from other findings on the intervention reviewed by and reported on the What Works Clearinghouse that Meet What Works Clearinghouse Evidence Standards with or without reservations; (c) the relevant finding in the study described in paragraph (a) is based on a sample that overlaps with the populations (*e.g.,* the types of student served) and settings proposed to receive the practice (*e.g.,* an after-school program both studied in, and proposed for, urban high schools); and (d) the relevant finding in the study described in paragraph (a) is based on a large sample and a multi-site sample.

Student achievement means—

For grades and subjects in which assessments are required under section 1111(b)(2) of Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA): (1) A student's score on such assessments; and, as appropriate (2) other measures of student learning, such as those described in the subsequent paragraph, provided that they are rigorous and comparable across schools with a local educational agency (LEA).

For grades and subjects in which assessments are not required under section 1111(b)(2) of ESEA, as amended by ESSA: (1) Alternative measures of student learning and performance, such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; (2) students learning objectives; (3) student performance on English language proficiency assessments; and (4) other measures of student achievement that are rigorous and comparable across schools within an LEA.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the EIR program under 20 U.S.C. 1138–1138d and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priorities, definitions, and requirements under section 437(d)(1) of GEPA. These priorities,

definitions, and requirements will apply to the FY 2017 grant competition only.

Program Authority: Section 4611 of the ESEA, as amended by P.L. 114–95 ESSA.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: The Administration has requested $180,000,000 for new awards for this program for FY 2017, of which approximately $141,000,000 would be used, in total, for new awards under the Early-phase, Mid-phase, and Expansion competitions. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards:

Early-phase grants: $700,000–$800,000 per year.

Mid-phase grants: $1,400,000–$1,600,000 per year.

Expansion grants: $2,750,000–$3,000,000 per year.

Estimated Average Size of Awards:

Early-phase grants: $3,750,000 for the entirety of the project period.

Mid-phase grants: $7,750,000 for the entirety of the project period.

Expansion grants: $14,500,000 for the entirety of the project period.

Estimated Number of Awards:

Early-phase grants: 24–38 awards.

Mid-phase grants: 15–20 awards.

Expansion grants: 3–5 awards.

Maximum Awards:

Early-phase grants: $4,000,000 for the entirety of the project period.

Mid-phase grants: $8,000,000 for the entirety of the project period.

Expansion grants: $15,000,000 for the entirety of the project period.

Project Period: Up to 60 months.

Under section 4611(c) of the ESEA, as amended by ESSA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the eligible applicants section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision, the Department may fund high-quality applications from rural applicants out of rank order in one or more of the EIR competitions.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) A State educational agency;

(c) The Bureau of Indian Education;

(d) A consortium of State educational agencies or LEAs;

(e) A nonprofit (as defined in this notice) organization; and

(f) A State educational agency, an LEA, a consortium described in (d), or the Bureau of Indian Education, in partnership with—

(1) A nonprofit organization;

(2) A business;

(3) An educational service agency; or

(4) An institution of higher education.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with a State educational agency; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

More information on rural applicant eligibility is in the application package.

2. a. *Cost Sharing or Matching:* Under section 4611 of the ESEA, as amended by ESSA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions on an annual basis relative to the annual budget amount of EIR grant funds and must provide evidence that they have secured their matching contributions for the first year of the grant in their grant applications. Section 4611 of the ESEA, as amended by ESSA also authorizes the Secretary to waive this matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(a) The difficulty of raising matching funds for a program to serve a rural area;

(b) The difficulty of raising matching funds in areas with a concentration of LEAs or schools with a high percentage of students aged 5 through 17—

(1) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(2) Who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(3) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(4) Who are eligible to receive medical assistance under the Medicaid program; and

(c) The difficulty of raising funds on tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package. However, given the importance of matching funds to the long-term success of the project, the Secretary expects eligible entities to identify appropriate matching funds.

3. *Other:* The Secretary establishes the following requirements for the EIR program.

• *Innovations that Serve Kindergarten-through-Grade-12 (K–12) Students:* All grantees must implement practices that serve students who are in grades K–12 at some point during the

funding period. To meet this requirement, projects that serve early learners (*i.e.,* infants, toddlers, or preschoolers) must provide services or supports that extend into kindergarten or later years, and projects that serve postsecondary students must provide services or supports during the secondary grades or earlier.

• *Evidence Standards:* To be eligible for an award, an application for an Expansion grant must be supported by strong evidence (as defined in this notice) for at least one population and setting.

Note: An applicant must identify up to four study citations to be reviewed against WWC Evidence Standards for the purposes of meeting the EIR evidence standard requirement. An applicant should clearly identify these citations in the Evidence form. The Department will not review a study citation that an applicant fails to clearly identify for review. In addition to including up to four study citations, applicants must include a description of: (1) The positive student outcomes they intend to replicate under their Expansion grant and how the positive student outcomes correspond with the high-need students to be served under the Expansion grant; (2) the practice(s) the applicant plans to implement; and (3) the intended student outcomes that the practices(s) attempts to impact in the form.

An applicant must ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time. However, if the WWC determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC will submit a query to the study author(s) to gather information for use in determining a study rating. Authors are asked to respond to queries within 10 business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study will be deemed ineligible under the grant competition. After the grant competition closes, the WWC will continue to include responses to author queries and will make updates to study reviews as necessary. However, the competition can only take into account information that is available at the time the competition is open.

Note: The evidence standards apply to the prior research that supports the effectiveness of the proposed project. The EIR program does not restrict the source of prior research providing evidence for the proposed project. As such, an applicant could cite prior research in the Evidence form for studies that were conducted by another entity (*i.e.,* an entity that is not the applicant) so long as the prior research studies cited in the application are relevant to the effectiveness of the proposed project.

• *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant (*i.e.,* Early-phase, Mid-Phase, and Expansion grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

• *Limit on Grant Awards:* No grantee may receive in a single year new EIR grant awards that total an amount greater than the sum of the maximum amount of funds for an Expansion grant and the maximum amount of funds for an Early-phase grant for that year. For example, in a year when the maximum award value for an Expansion grant is $15 million and the maximum award value for an Early-phase grant is $4 million, no grantee may receive in a single year new grants totaling more than $19 million.

• *Partnerships:* An applicant must demonstrate sufficient partnerships with schools/LEA(s) by identifying in the application implementation schools/LEA(s) for years 1 and 2 of the grant project.

• *Evaluation:* The grantee must conduct an independent evaluation (as defined in this notice) of its project. This evaluation must estimate the impact of the EIR-supported practice (as implemented at the proposed level of scale) on a relevant outcome. An Expansion grantee's evaluation must examine the cost effectiveness of its practices and identify potential obstacles and success factors to scaling such practices, including those that would be relevant to other organizations.

In addition, the grantee and its independent evaluator must agree to cooperate with any technical assistance provided by the Department or its contractor and comply with the requirements of any evaluation of the program conducted by the Department. This includes providing to the Department or its contractor, an updated comprehensive evaluation plan in a format and using such tools as the Department may require, as outlined in the Cooperative Agreement. Expansion grantees' evaluations plans must include a description of how they intend to assess the scaling strategy in addition to measuring impact of the practice. Grantees must update this evaluation plan at least annually to reflect any changes to the evaluation. All of these updates must be consistent with the scope and objectives of the approved application.

• *Public Availability of Data and Results:* Applications under Expansion grants must include a Data Management Plan (DMP); the DMP should be no more than five pages in Appendix C that describes the applicant's plans for making the final research data from the proposed project accessible to others. Resources that may be of interest to researchers in developing a data management plan can be found at *http://ies.ed.gov/funding/researchaccess.asp.* DMPs are expected to differ depending on the nature of the project and the data collected. By addressing the items identified below, your DMP describes how you will share data under the DMP you are required to include in your application. The DMP should include the following:

(a) Type of data to be shared;

(b) Procedures for managing and for maintaining the confidentiality of personally identifiable information;

(c) Roles and responsibilities of project or institutional staff in the management and retention of research data, including a discussion of any changes to the roles and responsibilities that will occur should the Project Director/Principal Investigator and/or co-Project Directors/co-Principal Investigators leave the project or their institution;

(d) Expected schedule for data access, including how long the data will remain accessible (at least 10 years unless a shorter period of time is required to comply with applicable Federal or State laws or agreements promulgated to ensure compliance with such laws in which the destruction of records or personal information is required within a shorter period of time) and acknowledgement that the timeframe of data accessibility will be reviewed at the annual progress reviews and revised as necessary;

(e) Format of the final dataset;

(f) Dataset documentation to be provided;

(g) Method of data access (*e.g.,* provided by the Project Director/Principal Investigator, through a data archive) and how those interested in

using the data can locate and access them;

(h) Whether or not a data agreement that specifies conditions under which the data will be shared will be required; and

(i) Any circumstances that prevent all or some of the data from being made accessible. This includes data that may fall under multiple statutes and, hence, must meet the confidentiality requirements for each applicable statute (*e.g.,* data covered by Common Rule for Protection of Human Subjects, Family Educational Rights and Privacy Act (FERPA), and Health Insurance Portability and Accountability Act (HIPAA)).

The costs of the DMP can be covered by the grant and should be included in the budget and explained in the budget narrative. The peer-review process will not include the DMP in the scoring of the application. The EIR team will be responsible for reviewing the completeness of the proposed DMP and will work with EIR grantees to finalize the DMP once the grant is awarded.

Recipients of awards are expected to publish or otherwise make publicly available the results of the work supported through EIR, including the evaluation report. EIR grantees must submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (ERIC), *http://eric.ed.gov.*

• *Scaling:* Expansion grants must scale the project to a national level and include new contexts and populations for implementation. Scaling targets should be established for the number of students to be served for the total project period as well as the target number of students to be served each year of the project. Expansion grants must also include their scaling strategy as a component of the evaluation plan for the grant. Given that all EIR grantees are required to report on the performance measure regarding the target number of students served by the grant, applicants should propose scaling targets that represent reasonable costs per student for the grant.

• *Management Plan:* An EIR grantee must provide an updated comprehensive management plan for the approved project in a format and using such tools as the Department may require, as outlined in the Cooperative Agreement. This management plan must include detailed information about implementation of the first year of the grant, including key milestones, staffing details, and other information that the Department may require. It must also include a complete list of performance metrics, including baseline measures and annual targets. The grantee must update this management plan at least annually to reflect implementation of subsequent years of the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2.a. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition. Notice of Intent to Apply: February 13, 2017.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) the absolute priority the applicant intends to address. Applicants may access this form online at *https://www.surveymonkey.com/r/GRZ5RDW.* Applicants that do not complete this form may still submit an application. Pre-Application: The EIR program intends to hold Webinars and/or meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these Webinars and/or meetings will be provided on the EIR Web site at *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.*

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants should limit the application narrative for an Expansion grant application to no more than 50 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Expansion competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

We plan on posting the project narrative section of funded EIR applications on the Department's Web site. Accordingly, you may wish to request confidentiality of business information. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,''

please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: December 19, 2016.

Deadline for Notice of Intent to Apply: February 13, 2017.

Pre-Application Webinars and/or Meetings: The EIR program intends to hold Webinars and/or meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these Webinars and/or meetings will be provided on the EIR Web site at *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.*

Deadline for Transmittal of Applications: April 13, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 13, 2017.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the EIR Program, CFDA number 84.411A, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.* You may access the electronic grant application for EIR Expansion at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.411, not 84.411A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do

not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov,* please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kelly Terpak, U.S.

Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202–5900. FAX: (202) 401–4123.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center,Attention: (CFDA Number 84.411A),550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Expansion competition are from 34 CFR 75.210.

The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. Significance (Up to 10 Points)

In determining the significance of the project, the Secretary considers the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The national significance of the proposed project.

(3) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

B. Strategy to Scale (Up to 35 Points)

In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant demonstrates there is unmet demand for the process, product, strategy, or practice that will enable the applicant to reach the level of scale that is proposed in the application.

(2) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application.

(3) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

C. Quality of the Project Design and Management Plan (Up to 35 Points)

In determining the quality of the proposed project design, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(3) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(4) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* State educational agencies, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence.

D. Quality of the Project Evaluation (Up to 20 Points)

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations.

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(3) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(4) The extent to which the evaluation plan clearly articulates the key components, mediators, and outcomes of the grant-supported intervention, as well as a measurable threshold for acceptable implementation.

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1*; and (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'' to the list of evaluation resources: *http://ies.ed.gov/ncee/projects/evaluationTA.asp*;

and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view two optional Webinar recordings that were hosted by the Institute of Education Sciences. One Webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing studies that meet WWC evidence standards without reservations. This Webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice. For Expansion grant applications we intend to conduct a single-tier review.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The overall purpose of the EIR program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement for high-need students. We have established several performance measures for the EIR Expansion grants.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees that implement a well-designed, well-implemented, and independent evaluation that provides information about the key practices and the approach of the project so as to facilitate replication; (5) the percentage of grantees that implement an evaluation that provides information on the cost effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reached the targeted number of high-need students specified in the application; (3) the percentage of grantees that implement a completed well-designed, well-implemented, and independent evaluation that provides evidence of

their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees with a completed well-designed, well-implemented, and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; (5) the percentage of grantees with an evaluation that provided information on the cost effectiveness of the key practices, and obstacles and success factors to scaling; and (6) the cost per student served by the grant.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202–5900. Telephone: (202) 453–7122. FAX: (202) 401–4123 or by email: *eir@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 9, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–30086 Filed 12–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCC–0141]

Agency Information Collection Activities; Comment Request; Grant Application Form for Project Objectives and Performance Measures Information

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 13, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCC–0141. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–343, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Alfreida Pettiford, 202–245–6110.

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: Grant Application Form for Project Objectives and Performance Measures Information.

OMB Control Number: 1894–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 6,349.

Total Estimated Number of Annual Burden Hours: 31,745.

Abstract: The U.S. Department of Education Grant Application Form for Project Objectives and Performance Measures Information serves as a precursor to the U.S. Department of Education Grant Performance Report Form (ED 524 B) in which project objectives, measures, and targets will be entered by applicants at the time that grant applications are entered in *Grants.gov.*

The Grant Application Form for Project Objectives and Performance Measures Information form and instructions are used by many ED discretionary grant programs to enable grantees to meet ED deadline dates for submission of performance reports to the Department.

Dated: December 12, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–30106 Filed 12–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research Program—Early-Phase Grants

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Education Innovation and Research Program—Early-phase Grants.

Notice inviting applications for new awards for fiscal year (FY) 2017.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411C (Early-phase Grants).

DATES:

Applications Available: December 19, 2016.

Deadline for Notice of Intent To Apply: February 13, 2017.

Deadline for Transmittal of Applications: April 13, 2017.

Deadline for Intergovernmental Review: June 13, 2017.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Education Innovation and Research (EIR) Program, established under section 4611 of the Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement (as defined in this notice) and attainment for high-need students (as defined in this notice); and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent educational challenges and to support the expansion of effective solutions to serve substantially larger numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding that an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers. Applicants proposing innovative projects that are supported by limited evidence can receive relatively small grants to support the development, iteration, and initial evaluation of the practices (as defined in this notice); applicants proposing projects supported by evidence from rigorous evaluations, such as large randomized controlled trials (as defined in this notice), can receive larger grant awards to support expansion across the country. This structure provides incentives for applicants to: (1) Explore new ways of addressing persistent challenges that other educators can build on and learn from; (2) build evidence of effectiveness of their practices; and (3) replicate and scale successful practices in new schools, districts, and states while addressing the barriers to scale, such as cost structures and implementation fidelity.

All EIR projects are expected to generate information regarding their effectiveness in order to inform EIR grantees' efforts to learn about and improve upon their efforts, and to help similar, non-EIR efforts across the country benefit from EIR grantees' knowledge. By requiring that all grantees conduct independent evaluations (as defined in this notice) of their EIR projects, EIR ensures that its funded projects make a significant contribution to improving the quality and quantity of information available to practitioners and policymakers about which practices improve student achievement, for which types of students, and in what contexts.

The Department of Education (Department) awards three types of grants under this program: ''Early-phase'' grants, ''Mid-phase'' grants, and ''Expansion'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

EIR Early-phase grants provide funding to support the development, iteration, implementation, and feasibility testing of practices that are expected to be novel and significant relative to others that are underway nationally. These Early-phase grants are not intended simply to implement established practices in additional locations or address needs that are unique to one particular context. The goal is to determine whether and in what ways relatively newer practices can improve student achievement for high-need students.

This notice invites applications for Early-phase grants only. The notices inviting applications for Mid-phase and Expansion grants are published elsewhere in this issue of the **Federal Register**.

Background: EIR builds on seven years of investments—over $1.4 billion, matched by over $200 million in private sector resources—from the Department's Investing in Innovation (i3) program. i3 has generated new information regarding effective educational practices and increased evaluators' capacity to conduct rigorous evaluations of student learning outcomes that provide actionable information for educators. EIR is designed to build upon the successes of i3 to offer new opportunities for States, districts, schools, and educators to develop innovations and scale effective practices that address their most pressing challenges.

Early-phase EIR grantees are expected to continuously make improvements in project design and implementation before conducting a full-scale evaluation of effectiveness. Grantees should consider questions such as:

- How easy would it be for others to implement this practice, and how can its implementation be improved?
- How can I use data from early indicators to gauge impact, and what changes in implementation and student achievement do these early indicators suggest? By focusing on continuous improvement and iterative development, Early-stage grantees can make adaptations that are necessary to increase their practice's potential to be effective and ensure that its EIR-funded evaluation assesses the impact of a thoroughly conceived practice.

In order to leverage existing information that can inform which kinds of practices could have a meaningful impact on underserved students, Early-phase applicants must demonstrate a rationale (as defined in this notice) for their project. In addition, like all EIR grantees, Early-stage grantees are expected to conduct an independent evaluation. Given EIR's goal of helping develop a collective body of evidence that can inform the future expansion and refinement of practices that effectively serve high-need students, Early-stage grantees' evaluation designs are expected to have the potential meet the moderate evidence (as defined in this notice) threshold. Not only will such evaluation data build the knowledge base about effective practices for underserved students, but it will also encourage prospective Mid-phase applicants to leverage the findings from Early-phase

grantees' efforts, and thereby continue to evolve EIR-funded practices.

To the extent possible, we intend to fund multiple projects addressing similar challenges. By so doing, we aim to accelerate the building of a knowledge base of effective practices for addressing these challenges and increase the likelihood that grantees can learn from one another while still exploring different approaches. We believe that improving outcomes across the education sector depends, in part, upon policymakers, practitioners and researchers continually building upon one another's efforts to have the greatest impact.

All EIR applicants are required to serve high-need students and are therefore required to address absolute priority one. In addition, EIR Early-phase applicants are also required to address one of the other five absolute priorities. These are critical areas in which rigorous evidence is scarce, and schools, districts, and States can meaningfully contribute to the generation and use of evidence-based approaches.

First, we include an absolute priority to improve school climate. Under this priority, the Department seeks to support innovative alternatives to exclusionary discipline policies and to support positive interventions that can address the negative and often disparate impact of classroom removals by promoting safe schools that have a positive culture for all students. Research has shown that implementing alternative disciplinary policies and behavioral supports can support both improved academic and non-academic outcomes for students.[1] More efforts are needed to identify the root causes of discipline-related disparities, to demonstrate viable alternatives to removing students from classroom activities, and to contribute new research on how such practices can result in positive outcomes. Such efforts can help ensure a positive and inclusive school culture for students and educators alike.

Second, we include an absolute priority focusing on student diversity. In parts of the country, America's schools are more segregated than they were in the late 1960s, including by students' race and socioeconomic status.[2] One-quarter of our nation's public school students attend high-poverty schools where more than 75 percent of the student body is eligible for free and reduced-price lunch; in our cities, nearly half of all students attend schools where poverty is concentrated.[3] In addition, almost half of all African-American and Latino public school students attend economically segregated schools. Children raised in segregated communities have significantly lower social and economic mobility than children growing up in integrated communities, and States with socioeconomically segregated schools tend to have larger achievement gaps between students from low- and higher-income households.[4] There is a growing body of evidence suggesting that socioeconomic diversity in schools can lead to improved outcomes for students from low-income households (compared to students from low-income households who attend higher-poverty schools),[5] and innovative strategies for increasing diversity within classroom or school environments could benefit all high-need students. These strategies may include new instructional approaches that impact socioeconomic integration and student achievement within schools (*e.g.,* schools could improve participation of students from low-income households in advanced placement or ''honors'' coursework) or redesigned inter-district recruitment and admissions strategies to support and foster such diversity in schools. It is particularly important to focus concurrently on increasing diversity and improving student outcomes (including closing gaps in academic performance between socioeconomic and racial groups) in areas where schools are acutely impacted by segregation.

Third, we include an absolute priority to increase the number and proportion of high-need students who are academically prepared for the transition to college, other postsecondary education, or other career and technical education. Postsecondary education is an increasingly critical requirement for succeeding in today's economy. By 2020, approximately 35 percent of job openings will require at least a bachelor's degree, and another 30 percent will require at least an associate's degree or some college.[6] However, many high school students—especially those from low-income backgrounds—lack access to the rigorous coursework and support services that help prepare students for success in college or career education. New approaches are needed to address inequities in preparation for postsecondary education, and to help high-need students to transition successfully to college or to technical training that will lead to meaningful employment opportunities. Applicants under this priority must serve students in K–12 settings at some point during the grant, but may also provide support to help these students enroll in and successfully transition into college or other career or technical education.

Fourth, the Department includes an absolute priority to increase the number of effective principals who improve student outcomes in public schools. School leaders play an essential role in shaping school cultures, aligning parents and educators around shared goals, and, ultimately, influencing student achievement.[7] Yet preparation programs and support for school leaders are often lacking. The best principal preparation programs, for example, may include rigorous screening and selection entry requirements, offer courses that are aligned with standards of practice, and provide sufficient clinical experiences for candidates. Current principals need support and development opportunities that will

[1] Flay, B., Acock, A., Vuchinich, S., and Beets, M. (2006). *Progress Report of the Randomized Trial of Positive Action in Hawaii: End of Third Year of Intervention*. Twin Falls, ID: Positive Action, Inc.; Flay, B.R., and Allred, C.G. (2003). ''Long-term Effects of the Positive Action Program.'' *American Journal of Healthy Behavior,* 27(1), 6–21.

[2] Orfield, G., and Frankenberg, E., (May, 2014). *Brown at 60: Great Progress, a Long Retreat and an Uncertain Future.* Civil Rights Project/Proyecto Derechos Civiles, May 2014 (revised version 5–15–14).

[3] U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), ''Public Elementary/Secondary School Universe Survey,'' 2012–13. See Digest of Education Statistics 2014. *https://nces.ed.gov/ccd/pubschuniv.asp.*

[4] Mantil, A., Perkins, A.G., and Aberger, S., (2012). ''The Challenge of High-Poverty Schools: How Feasible Is Socioeconomic School Integration?'' *The Future of School Integration:* 155–222.

[5] Stuart Wells, A., Fox, L., and Cordova-Cobo, D. (February 2016). ''How Racially Diverse Schools and Classrooms Can Benefit All Students.'' The Century Foundation. Available at: *https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/.* Paper presented at the American Sociological Association, Chicago, IL; Mickelson, R.A. (2001). ''Subverting Swann: First and Second-Generation Segregation in Charlotte, North Carolina.'' *American Educational Research Journal,* 38, 215–252; Mickelson, R.A. (2006). *How Middle School Segregation Contributes to the Race Gap in Academic Achievement.* Paper presented at AERA 425; Tevis, (2007). *African-American Students' College Transition Trajectory: An Examination of the Effects of High School Composition and Expectations on Degree Attainment.* Dissertation in Educational Theory & Policy. The Pennsylvania State University.

[6] Anthony P. Carnevale, Nicole Smith and Jeff Strohl. (2014). ''Recovery, Job Growth and Education Requirements Through 2020.'' Georgetown Public Policy Institute Center on Education and the Workforce. Available at: *https://cew.georgetown.edu/wp-content/uploads/2014/11/Recovery2020.FR_.Web_.pdf.*

[7] Sebastian, J., & Allensworth, E. (2012). ''The influence of principal leadership on classroom instruction and student learning a study of mediated pathways to learning.'' Educational Administration Quarterly, 48(4), 626–663. Available at: *http://eaq.sagepub.com/content/48/4/626.short.*

enable them to shape a strong professional community with collective responsibility for student learning. The evidence base of effective practices for training, supporting, and retaining high-impact school leaders is relatively underdeveloped, and new, aligned efforts from EIR grantees could make significant strides in better understanding how to ensure that our school leaders are best positioned to improve the achievement of high-need students.

Finally, we include an absolute priority to reconnect disconnected youth (as defined in this notice) to educational opportunities. Today, roughly 14 percent of youth ages 16 to 24 in America are neither enrolled in school nor working.[8] This percentage equates to more than 5.6 million young Americans (more youths than in the entire K–12 public school systems in Colorado, Georgia, Michigan, and Virginia combined).[9] Consequently, we believe it is important to link disconnected youth with the appropriate supports and interventions they need to achieve academic success. One approach might include cross-sector regional initiatives that create opportunities for disconnected youth to get a high school diploma (or equivalent) before pursuing postsecondary education or full-time employment. Another possibility is to build upon the experiences of ''re-engagement centers'' such as those in Boston, MA, Washington, DC, and St. Paul, MN, where communities have shown positive outcomes in re-connecting youth with the systems and supports needed for academic and career success.[10] Additionally, States, districts, and schools might better utilize longitudinal data systems to provide timely information about students at risk of dropping out, those students who are chronically absent, or those who have already dropped out in order to better match them with targeted educational and related interventions.

[8] Kena, G., Musu-Gillette, L., Robinson, J., Wang, X., Rathbun, A., Zhang, J., Wilkinson-Flicker, S., Barmer, A., and Dunlop Velez, E. (2015). The Condition of Education 2015 (NCES 2015–144). U.S. Department of Education, National Center for Education Statistics. Washington, DC. Retrieved August 13, 2015 from *http://nces.ed.gov/programs/coe/indicator_soa.asp.*

[9] U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), ''State Nonfiscal Survey of Public Elementary/Secondary Education,'' 1990–91 through 2012–13.Table 203.20. *http://nces.ed.gov/programs/digest/d14/tables/dt14_203.20.asp.*

[10] For additional information please see: *http://www.bostonpic.org/programs/project-reconnect, http://osse.dc.gov/dcreengagementcenter,* and *http://www.ujamaaplace.org/about.html.*

Priorities: This competition includes six absolute priorities. Absolute Priority 1 is from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Supplemental Priorities). We are establishing Absolute Priorities 2, 3, 4, 5, and 6 in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). These absolute priorities will apply to the FY 2017 EIR Early-phase competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Absolute Priorities: These priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1, Supporting High-Need Students, and one additional priority. Applicants must clearly identify the specific absolute priority that the proposed project addresses.

These priorities are:

Absolute Priority 1—Supporting High-Need Students

Under this priority, we provide funding to projects that are designed to improve academic outcomes for high-need students.

Absolute Priority 2—Improving School Climate

Under this priority, we provide funding to projects that are designed to improve student outcomes through reducing or eliminating disparities in school disciplinary practices for particular groups of students, including students of color and students with disabilities, or reducing or eliminating the use of exclusionary discipline (such as suspensions, expulsions, and unnecessary placements in alternative education programs) by identifying and addressing the root causes of those disparities or uses and promoting alternative disciplinary practices that address the disparities or uses.

Absolute Priority 3—Promoting Diversity

Under this priority, we provide funding to projects that are designed to help LEAs prepare students for success in an increasingly diverse society by increasing the diversity—including racial, ethnic, and socioeconomic diversity—of students enrolled in the individual schools in the LEAs.

Absolute Priority 4—Increasing Postsecondary Preparedness

Under this priority, we provide funding to projects that are designed to increase the number and proportion of K–12 high-need students who are academically and socially prepared for and subsequently enroll in college, other postsecondary education, or other career and technical education.

Absolute Priority 5—Improving the Effectiveness of Principals

Under this priority, we provide funding to projects that are designed to increase the number and percentage of highly effective principals by creating or expanding practices and strategies to recruit, select, prepare, and support individuals to significantly improve instruction in schools.

Absolute Priority 6—Re-Engagement of Disconnected Youth

Under this priority, we provide funding to projects that are designed to improve student achievement through strategies that provide disconnected youth (as defined in this notice) with high-quality educational opportunities.

Definitions

The definition of ''nonprofit'' is from 34 CFR 77.1. The definitions for ''disconnected youth,'' ''high-need students,'' and ''regular high school diploma,'' are from the Supplemental Priorities. The definitions of ''local educational agency'' and ''state educational agency'' are from Section 8101 of the ESEA, as amended by ESSA. We are establishing the definitions for ''demonstrates a rationale,'' ''experimental study,'' ''high-minority school,'' ''independent evaluation,'' ''large sample,'' ''logic model,'' ''meets What Works Clearinghouse Evidence Standards without reservations,'' ''meets What Works Clearinghouse Evidence Standards with reservations,'' ''moderate evidence,'' ''multi-site sample,'' ''practice,'' ''quasi-experimental design study,'' ''randomized controlled trial,'' ''regression discontinuity design study,'' ''relevant finding,'' ''relevant outcome,'' ''rural local educational agencies,'' ''single-case design study,'' and ''student achievement'' for the FY 2017 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Demonstrates a rationale means the practice is supported by a reasonable logic model (as defined in this notice) that that is informed by research or an evaluation that suggests how the

practice is likely to improve relevant outcomes (as defined in this notice).

Disconnected youth means low-income individuals, ages 14–24, who are homeless, are in foster care, are involved in the justice system, or are not working or not enrolled in (or at risk of dropping out of) an educational institution.

Experimental study means a study, such as a randomized controlled trial (RCT) (as defined in this notice), that is designed to compare outcomes between two groups of individuals that are otherwise equivalent except for their assignment to either a treatment group receiving a practice or a control group that does not. In some circumstances, a finding from a regression discontinuity design study (RDD) (as defined in this notice) or findings from a collection of single-case design studies (SCDs) (as defined in this notice) may be considered equivalent to a finding from an RCT. RCTs and RDDs, and collections of SCDs, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations (as defined in this notice).

High-minority school means a school as that term is defined by a local educational agency (LEA) (as defined in this notice), which must define the term in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(g)(1)(B) of the Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA). The applicant must provide the definition(s) of high-minority schools (as defined in this notice) used in its application.

High-need students means students who are at risk for educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma (as defined in this notice), who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice and are implementing it.

Large sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that each contain, on average, 10 or more students (or other single analysis units, regardless of whether these single analysis units are disaggregated in the analysis of outcomes for the groups). Multiple studies can cumulatively meet the large sample and multi-site (as defined in this notice) requirements of moderate evidence, as long as each study meets the other requirements of the particular level of evidence (*i.e.,* moderate evidence).

Local educational agency means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also known as a theory of action) means a reasonable conceptual framework that identifies key components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key components and outcomes.

Meets What Works Clearinghouse Evidence Standards without reservations is the highest possible rating for a study finding reviewed by the What Works Clearinghouse (WWC). Studies receiving this rating provide the highest degree of confidence that an estimated effect was caused by the practice studied. Experimental studies (as defined in this notice) may receive this highest rating. These standards are described in the WWC Procedures and Standards Handbooks, Version 3.0, which can be accessed at *http://ies.ed.gov/ncee/wwc/Handbooks.*

Meets What Works Clearinghouse Evidence Standards with reservations is the second-highest rating for a study finding reviewed by the What Works Clearinghouse (WWC). Studies receiving this rating provide a reasonable degree of confidence that an estimated effect was caused by the practice studied. Both experimental studies (as defined in this notice) (such as randomized controlled trials with high rates of sample attrition) and quasi-experimental design studies (as defined in this notice) may receive this rating if they establish the equivalence of the treatment and comparison groups in key baseline characteristics. These standards are described in the WWC Procedures and Standards Handbooks, Version 3.0, which can be accessed at *http://ies.ed.gov/ncee/wwc/Handbooks.*

Moderate evidence means the following conditions are met: (a) There is at least one experimental or quasi-experimental design study of the effectiveness of the practice with a relevant finding (as defined in this notice) that Meets What Works Clearinghouse Evidence Standards with or without reservations (as defined in this notice) (*e.g.,* a quasi-experimental design study or high-attrition randomized controlled trial that establishes the equivalence of the treatment and comparison groups in student achievement at baseline); (b) the relevant finding in the study described in paragraph (a) is of a statistically significant and positive (*i.e.,* favorable) effect on a student outcome or other relevant outcome, with no statistically significant and overriding negative (*i.e.,* unfavorable) evidence on that practice from other findings on the intervention reviewed by and reported on the What Works Clearinghouse that Meet What Works Clearinghouse Evidence Standards with or without reservations; (c) the relevant finding in the study described in paragraph (a) is based on a sample that overlaps with the populations (*e.g.,* the types of student

served) or settings proposed to receive the practice (*e.g.,* an after-school program studied in urban high schools and proposed for rural high schools); and (d) the relevant finding in the study described in paragraph (a) is based on a large sample and a multi-site sample (as defined in this notice).

Multi-site sample means more than one site, where site can be defined as an LEA, locality, or State. A sample could be multi-site if it includes campuses in two or more localities (*e.g.,* cities or counties), even if the campuses all belong to the same LEA or the same postsecondary school system. Multiple studies can cumulatively meet the multi-site sample and large sample (as defined in this notice) requirements of moderate evidence, as long as each study meets the other requirements of the particular level of evidence (*i.e.,* moderate evidence).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Practice means an activity, strategy, or intervention included in a project. Evidence may pertain to an individual practice, or to a combination of practices (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study (QED) means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards with reservations (but not without reservations).

Randomized controlled trial (RCT) means a study that employs random assignment of, for example, students, teachers, classrooms, or schools to receive the practice being evaluated (the treatment group) or not to receive the practice (the control group). The estimated effectiveness of the practice is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations.

Regression discontinuity design study (RDD) means a study that assigns the practice being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes. The effectiveness of the practices is estimated for individuals who barely qualify to receive that practice. These studies, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations.

Regular high school diploma means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Relevant finding means a finding from a study regarding the relationship between (a) an activity, strategy, or intervention included as a practice of the logic model for the proposed project, and (b) a student outcome or other relevant outcome included in the logic model for the proposed project.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed practice is designed to improve; consistent with the specific goals of a project.

Rural local educational agencies means local educational agencies with an urban-centric district locale code of 32, 33, 41, 42, or 43, which can be found at the following link: *https://nces.ed.gov/ccd/ccdLocaleCodeDistrict.asp.*

Single-case design study (SCD) means a study that use observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment. According to the What Works Clearinghouse Single Case Design Pilot Standards, a collection of these studies, depending on design and implementation (*e.g.,* including a sufficient number of cases and of data points per condition), can Meet What Works Clearinghouse Evidence Standards without reservations.

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Student achievement means—

For grades and subjects in which assessments are required under section 1111(b)(2) of Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA): (1) A student's score on such assessments; and, as appropriate (2) other measures of student learning, such as those described in the subsequent paragraph, provided that they are rigorous and comparable across schools with a local educational agency (LEA).

For grades and subjects in which assessments are not required under section 1111(b)(2) of ESEA, as reauthorized by ESSA: (1) Alternative measures of student learning and performance, such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; (2) students learning objectives; (3) student performance on English language proficiency assessments; and (4) other measures of student achievement that are rigorous and comparable across schools within an LEA.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This grant competition is the first grant competition for the EIR program under 20 U.S.C. 1138–1138d and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priorities, definitions, and requirements under section 437(d)(1) of GEPA. These priorities, definitions, and requirements will apply to the FY 2017 grant competition only.

Program Authority: Section 4611 of the ESEA, as amended by ESSA.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: The Administration has requested $180,000,000 for the EIR program for FY 2017, of which approximately $141,000,000 would be used, in total, for new awards under the Early-phase, Mid-phase, and Expansion competitions. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards:

Early-phase grants: $700,000–$800,000 per year.

Mid-phase grants: $1,400,000–$1,600,000 per year.

Expansion grants: $2,750,000-$3,000,000 per year.

Estimated Average Size of Awards:

Early-phase grants: $3,750,000 for the entirety of the project period.

Mid-phase grants: $7,750,000 for the entirety of the project period.

Expansion grants: $14,500,000 for the entirety of the project period.

Estimated Number of Awards:

Early-phase grants: 24–38 awards.

Mid-phase grants: 15–20 awards.

Expansion grants: 3–5 awards.

Maximum Awards:

Early-phase grants: $4,000,000 for the entirety of the project period.

Mid-phase grants: $8,000,000 for the entirety of the project period.

Expansion grants: $15,000,000 for the entirety of the project period.

Project Period: Up to 60 months.

Under section 4611(c) of the ESEA, as amended by ESSA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the eligible applicants section and the applicant certifies that it meets those qualifications through the application. In implementing this statutory provision, the Department may fund high-quality applications from rural applicants out of rank order in one or more of the EIR competitions.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) A State educational agency;

(c) The Bureau of Indian Education;

(d) A consortium of State educational agencies or LEAs;

(e) A nonprofit organization; and

(f) A State educational agency, an LEA, a consortium described in (d), or the Bureau of Indian Education, in partnership with—

(1) A nonprofit (as defined in this notice) organization;

(2) A business;

(3) An educational service agency; or

(4) An institution of higher education.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with a State educational agency; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

More information on rural applicant eligibility is in the application package.

2.a. *Cost Sharing or Matching:* Under section 4611 of the ESEA, as amended by ESSA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions on an annual basis relative to the annual budget amount of EIR grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications. Section 4611 of the ESEA, as amended by ESSA also authorizes the Secretary to waive this matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(a) The difficulty of raising matching funds for a program to serve a rural area;

(b) The difficulty of raising matching funds in areas with a concentration of local educational agencies or schools with a high percentage of students aged 5 through 17—

(1) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(2) Who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(3) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(4) Who are eligible to receive medical assistance under the Medicaid program; and

(c) The difficulty of raising funds on tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package. However, given the importance of matching funds to the long-term success of the project, the Secretary expects eligible entities to identify appropriate matching funds.

3. *Other:* The Secretary establishes the following requirements for the EIR program.

• *Innovations that Serve Kindergarten-through-Grade-12 (K–12) Students:* All grantees must implement practices that serve students who are in grades K–12 at some point during the funding period. To meet this requirement, projects that serve early learners (*i.e.,* infants, toddlers, or preschoolers) must provide services or supports that extend into kindergarten or later years, and projects that serve postsecondary students must provide services or supports during the secondary grades or earlier.

• *Evidence Standards:* To be eligible for an award, an application for an Early-phase grant must demonstrate a rationale by including a reasonable logic model that is informed by research or an evaluation that suggests how the intervention is likely to improve relevant outcomes, and includes an effort to study the effects of the intervention that will happen as part of the proposed project.

• *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant (*i.e.,* Early-phase, Mid-phase, and Expansion grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted

by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

• *Limit on Grant Awards:* No grantee may receive in a single year new EIR grant awards that total an amount greater than the sum of the maximum amount of funds for an Expansion grant and the maximum amount of funds for an Early-phase grant for that year. For example, in a year when the maximum award value for an Expansion grant is $15 million and the maximum award value for an Early-phase grant is $4 million, no grantee may receive in a single year new grants totaling more than $19 million.

• *Partnerships:* An applicant must demonstrate sufficient partnerships with schools/LEA(s) by identifying in the application implementation schools/LEA(s) for years 1 and 2 of the grant project.

• *Evaluation:* The grantee must conduct an independent evaluation (as defined in this notice) of its project. This evaluation must estimate the impact of the EIR-supported practice (as implemented at the proposed level of scale) on a relevant outcome, with an evaluation design with the potential to meet moderate evidence (as defined in this notice).

The first years of an Early-phase grant are expected to focus on developing and iterating the practice in a few schools (or a limited version of the practice in a greater number of schools), and the independent evaluation is expected to generate information to inform the practice's development and iteration; the remaining years of an Early-phase grant are expected to entail full-scale implementation across the project's full set of schools, and the independent evaluation is expected to be an efficacy study of the practice, designed to have the potential meet the moderate evidence (as defined in this notice) threshold.

In addition, the grantee and its independent evaluator must agree to cooperate with any technical assistance provided by the Department or its contractor and comply with the requirements of any evaluation of the program conducted by the Department. This includes providing to the Department or its contractor, an updated comprehensive evaluation plan in a format and using such tools as the Department may require, as outlined in the Cooperative Agreement. Grantees must update this evaluation plan at least annually to reflect any changes to the evaluation. All of these updates must be consistent with the scope and objectives of the approved application.

• *Public Availability of Results:* Recipients of awards are expected to publish or otherwise make publicly available the results of the work supported through EIR, including the evaluation report. EIR grantees must submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (ERIC, *http://eric.ed.gov*).

• *Scaling:* Early-phase grants must scale to multiple schools over the life of the project. Scaling targets should be established for the number of students to be served for the total project period as well as the target number of students to be served each year of the project. Early-phase grants must also include their scaling strategy as a component of the evaluation plan for the grant. Given that all EIR grantees are required to report on the performance measure regarding the target number of students served by the grant, applicants should propose scaling targets that represent reasonable costs per student for the grant.

• *Management Plan:* An EIR grantee must provide an updated comprehensive management plan for the approved project in a format and using such tools as the Department may require, as outlined in the Cooperative Agreement. This management plan must include detailed information about implementation of the first year of the grant, including key milestones, staffing details, and other information that the Department may require. It must also include a complete list of performance metrics, including baseline measures and annual targets. The grantee must update this management plan at least annually to reflect implementation of subsequent years of the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/*. To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411C.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2.a. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: February 13, 2017.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) the absolute priority the applicant intends to address. Applicants may access this form online at *https://www.surveymonkey.com/r/GSPSYXQ*. Applicants that do not complete this form may still submit an application.

Pre-Application: The EIR program intends to hold webinars and/or meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these webinars and/or meetings will be provided on the EIR Web site at *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/*.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants should limit the application narrative for an Early-phase grant application to no more than 25 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Early-phase competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

We plan on posting the project narrative section of funded EIR applications on the Department's Web site. Accordingly, you may wish to request confidentiality of business information. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: December 19, 2016.

Deadline for Notice of Intent to Apply: February 13, 2017.

Pre-Application Webinars and/or Meetings: The EIR program intends to hold webinars and/or meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these webinars and/or meetings will be provided on the EIR Web site at *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.*

Deadline for Transmittal of Applications: April 13, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 13, 2017.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the EIR Program, CFDA number 84.411C, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for EIR Early-phase at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.411, not 84.411C).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202–5900. FAX: (202) 401–4123.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411C), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411C), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Early-phase competition are from 34 CFR 75.210.

The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. Significance (Up to 30 Points)

In determining the significance of the project, the Secretary considers the following factors:

(1) The national significance of the proposed project.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

B. Quality of the Project Design and Management Plan (Up to 50 Points)

In determining the quality of the proposed project design, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(3) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(4) The mechanisms the applicant will use to broadly disseminate information on its project so as to support further development or replication.

D. Quality of the Project Evaluation (Up to 20 Points)

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards with reservations.

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(3) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(4) The extent to which the evaluation plan clearly articulates the key components, mediators, and outcomes of the grant-supported intervention, as well as a measurable threshold for acceptable implementation.

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'' to the list of evaluation resources: *http://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view two optional Webinar recordings that were hosted by the Institute of Education Sciences. The first Webinar discussed strategies for designing and executing well-designed quasi-experimental design studies and is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=23.* The second Webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing studies that meet WWC evidence standards without reservations. This Webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice. For Early-phase grant applications we intend to conduct a single-tier review.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The overall purpose of the EIR program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement for high-need students. We have established several performance measures for the EIR Early-phase grants. By reporting on these performance measures in Annual and Final Performance reports, grantees will satisfy the requirement in Section 8101(21)(A)(ii)(II) of the ESEA, as amended by ESSA, for projects relying on the ''demonstrates a rationale'' evidence level, to have ''ongoing efforts to examine the effects'' of the funded activity, strategy, or intervention.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with evaluations designed to provide performance feedback to inform project design; (4) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness

at improving student outcomes; (5) the percentage of grantees that implement an evaluation that provides information about the key elements and the approach of the project so as to facilitate testing, development, or replication in other settings; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reached the target number of high-need students specified in the application; (3) the percentage of grantees that use evaluation data to make changes to their practice(s); (4) the percentage of grantees that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes; (5) the percentage of grantees with a completed evaluation that provides information about the key elements and the approach of the project so as to facilitate testing, development or replication in other settings; and (6) the cost per student served by the grant.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202–5900. Telephone: (202) 453–7122. FAX: (202) 401–4123 or by email: *eir@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 9, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–30085 Filed 12–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0144]

Agency Information Collection Activities; Comment Request; Application and Employment Certification for Public Service Loan Forgiveness

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 13, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0144. 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 Ian Foss, 202–377–3681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application and Employment Certification for Public Service Loan Forgiveness.

OMB Control Number: 1845–0110.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 728,419.

Total Estimated Number of Annual Burden Hours: 364,210.

Abstract: Final regulations for the Public Service Loan Forgiveness (PSLF) Program were published in the **Federal Register** on October 23, 2008 (73 FR

63256) and were codified in 34 CFR 685.219. These regulations require a borrower to submit an application for loan forgiveness to the U.S. Department of Education (the Department). To determine whether a borrower is eligible for loan forgiveness, the Department must confirm that the borrower was employed full-time by a qualifying public service organization at the time each of the required 120 payments was made. Because borrowers must make 120 payments on or after October 1, 2007 before becoming eligible for forgiveness, the earliest that any borrower could apply for forgiveness under PSLF would be October 1, 2017.

The Department is creating an application for forgiveness and revising the Employment Certification Form which is already part of this collection. Pages 2 through 6 of the current Employment Certification Form will also be embedded in the application. Slight changes have been made to the language on the Employment Certification Form to increase consistency and understanding.

Dated: December 13, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–30270 Filed 12–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research Program—Mid-Phase Grants

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Education Innovation and Research Program—Mid-phase Grants.

Notice inviting applications for new awards for fiscal year (FY) 2017.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411B (Mid-phase Grants).

DATES:

Applications Available: December 19, 2016.

Deadline for Notice of Intent to Apply: February 13, 2017.

Deadline for Transmittal of Applications: April 13, 2017.

Deadline for Intergovernmental Review: June 13, 2017.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Education Innovation and Research (EIR) Program, established under section 4611 of the Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement (as defined in this notice) and attainment for high-need students (as defined in this notice); and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent educational challenges and to support the expansion of effective solutions to serve substantially larger numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding that an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers. Applicants proposing innovative practices (as defined in this notice) that are supported by limited evidence can receive relatively small grants to support the development, iteration, and initial evaluation of the practices; applicants proposing practices supported by evidence from rigorous evaluations, such as large randomized controlled trials (as defined in this notice), can receive larger grant awards to support expansion across the country. This structure provides incentives for applicants to: (1) Explore new ways of addressing persistent challenges that other educators can build on and learn from; (2) build evidence of effectiveness of their practices; and (3) replicate and scale successful practices in new schools, districts, and states while addressing the barriers to scale, such as cost structures and implementation fidelity.

All EIR projects are expected to generate information regarding their effectiveness in order to inform EIR grantees' efforts to learn about and improve upon their efforts, and to help similar, non-EIR efforts across the country benefit from EIR grantees' knowledge. By requiring that all grantees conduct independent evaluations (as defined in this notice) of their EIR projects, EIR ensures that its funded projects make a significant contribution to improving the quality and quantity of information available to practitioners and policymakers about which practices improve student achievement, for which types of students, and in what contexts.

The Department of Education (Department) awards three types of grants under this program: ''Early-phase'' grants, ''Mid-phase'' grants, and ''Expansion'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

Mid-phase grants provide funding to support scaling of projects supported by moderate evidence (as defined in this notice) for at least one population or setting to the regional level (as defined in this notice) or to the national level (as defined in this notice). This notice invites applications for Mid-phase grants only. The notices inviting applications for Early-phase and Expansion grants are published elsewhere in this issue of the **Federal Register**.

Background: EIR builds on seven years of investments—over $1.4 billion, matched by over $200 million in private sector resources—from the Department's Investing in Innovation (i3) program in a portfolio of practices that address critical challenges in education and that generate rigorous evaluations to determine the practices' effectiveness. i3 has generated new information regarding effective educational practices and increased evaluators' capacity to conduct rigorous evaluations of student learning outcomes that provide actionable information for educators. EIR is designed expand on the successes of i3 to offer new opportunities for States, districts, schools, and educators to develop innovations and scale effective practices that address their most pressing challenges.

EIR Mid-phase projects are expected to refine and expand the use of practices with prior evidence of effectiveness, in order to improve outcomes for high-need students. They are also expected to generate important information about an intervention's effectiveness, including for whom and in which contexts a practice is most effective.

To the extent possible, we intend to fund multiple projects addressing similar challenges. By so doing, we aim to accelerate the building of a knowledge base of effective practices for addressing these challenges and increase the likelihood that grantees can learn from one another while still exploring different approaches. We

believe that improving outcomes across the education sector depends, in part, upon policymakers, practitioners and researchers continually building upon one another's efforts to have the greatest impact.

Mid-phase grantees must evaluate the effectiveness of the EIR-supported practice that the project implements and expands, and the application must include an evaluation designed to have the potential to meet the evidence requirement of strong evidence (as defined in this notice) under Expansion. Not only will such evaluation data build the knowledge base about effective practices for underserved students, but it will also encourage future Expansion applicants to leverage the findings from Mid-phase grantees' efforts. The evaluation of a Mid-phase project must identify and codify the core elements of the EIR-supported practice that the project implements in order to support adoption or replication by other entities; furthermore, the evaluation must examine effectiveness of the project for any new populations or settings that are included in the project. Mid-phase grantees should measure the cost-effectiveness of their practices using administrative or other readily available data, and test and validate alternatives to practices that are too costly or inefficient. These types of efforts are critical to sustaining and scaling EIR-funded effective practices after the EIR grant period ends, assuming that the practice has positive effects on important student outcomes.

All EIR applicants are required to serve high-need students and are therefore required to address absolute priority one. EIR Mid-phase applicants are also required to address one of the other four absolute priorities that address persistent challenges in public education for which there are solutions that are supported by moderate evidence.

First, the Department includes an absolute priority for improving early learning and development outcomes. Research continues to demonstrate that the quality of students' early learning (birth through third grade) experiences has a significant impact on subsequent academic and social competencies.[1] Through historic investments in early learning, the number of students enrolled in high-quality preschool has expanded dramatically over the last eight years, but the gains realized during preschool often fail to persist through elementary school.[2] This is particularly true for at-risk students. More should be done to ensure the gains from high-quality preschool experiences are sustained and built upon in early elementary school. Strategies to increase alignment across preschool through elementary school or to support students' transition into and through elementary school may lead to more lasting and significant academic outcomes.

Second, the Department includes an absolute priority to enhance students' social-behavioral competencies. These social-behavioral competencies may include social skills (*e.g.,* skills needed to positively interact with peers, teachers, and other adults), behavior (*i.e.,* promoting positive behaviors or reducing negative behaviors), or non-cognitive factors (*e.g.,* academic mindset, perseverance, and self-regulation).[3] There is significant research that shows a strong connection between these social-behavioral competencies and student learning,[4] but there is still a need to build the knowledge base of evidence-based practices that help students develop such skills and behaviors. These practices might include interventions that directly target students, support changes in educators' instructional practices (for example, preventative or responsive approaches to trauma), or redesign learning environments). Also needed are ways to measure such social emotional competencies in valid and reliable ways, and to demonstrate how improvement in such skills and behaviors affects overall student learning outcomes.[5]

Third, the Department includes an absolute priority for projects to improve low-performing schools (*e.g.,* schools selected for comprehensive support and improvement activities or targeted support and improvement activities or schools with the largest within-school performance gaps between student subgroups); and to ensure that more students receive a high-quality K–12 public education. Many of our historically underserved students are concentrated in schools that do not adequately meet their learning needs. By identifying the appropriate configuration of school improvement practices, educators can more readily and reliably improve student outcomes in the low-performing schools (as defined in this notice), and as appropriate, their feeder schools. It can be especially powerful when a variety of practices, such as those that promote a positive school culture, utilize early warning indicators to intervene with students at risk of educational failure, or implement effective research-based pedagogical practices are planned and implemented in mutually reinforcing ways.

Finally, the Department includes an absolute priority for projects supported by moderate evidence. Projects must demonstrate moderate evidence, for at least one population or setting, that are designed to improve student achievement and attainment in emerging areas of critical need. In recent years, there has been an increase in rigorous education research that is relevant to education practitioners.[6] Where there is a match between compelling evidence and the most urgent challenges in K–12 education, expanding the knowledge base regarding these effective practices may be important.

Priorities: This competition includes five absolute priorities. Absolute Priority 1 is from the Department's

[1] Andrews, R.J., Jargowsky, P., & Kuhne, K. (2012). *The effects of Texas's pre-kindergarten program on academic performance* (CALDER Working Paper No. 84). Washington, DC: National Center for Analysis of Longitudinal Data on Educational Research; Barnett, W.S. (2008). *Preschool education and its lasting effects: Research and policy implications.* Boulder, CO, & Tempe, AZ: Education and the Public Interest Center & Education Policy Research Unit. Retrieved from *http://nepc.colorado.edu/files/PB-Barnett-EARLY-ED_FINAL.pdf.*

[2] Lipsey, M.W., Farran, D.C., Hofer, K.G. (2015). *A randomized control trial of a statewide voluntary prekindergarten program on children's skills and behaviors through third grade.* Nashville, TN: Vanderbilt University, Peabody Research Institute; U.S. Department of Health and Human Services, Administration for Children and Families. (2010, January). *Head Start Impact Study: Final report.* Washington, DC: Author.

[3] The University of Chicago Consortium of Chicago School Research (June 2015). Foundations for Young Adult Success: A Developmental Framework. Retrieved from *https://consortium.uchicago.edu/sites/default/files/publications/Wallace%20Report.pdf;* Montroy, J.J., Bowles, R.P., Skibbe, L.E. and Foster, T.D. (2014). Social skills and problem behaviors as mediators of the relationship between behavioral self-regulation and academic achievement. *Early Childhood Research Quarterly, 29* (2014): 298–309.

[4] Casillas, A., Robbins, S., Allen, J., Kuo, Y.L., Ann Hanson, M., and Schmeiser, C. (2012). Predicting early academic failure in high school from prior academic achievement, psychosocial characteristics, and behavior. *Journal of Educational Psychology, 104*(2), 407–420; Yeager, D.S., and Walton, G.M. (2011). Social-psychological interventions in education: They're not magic. *Review of Educational Research, 81*(2), 267–301; Weissberg, R.P. and Cascarino, J. (2013). Academic learning + social-emotional learning = national priority. *Phi Delta Kappan, 95* (2): 8–13.

[5] The Department's What Works Clearinghouse includes information on research on social-behavioral competencies (using ''student behavior'' as a filer: *http://ies.ed.gov/ncee/wwc/findwhatworks.aspx*), as well as a Practice Guide on Reducing Behavior Problems in the Elementary School Classroom: *http://ies.ed.gov/ncee/wwc/PracticeGuide.aspx?sid=4*).

[6] Kantrowitz, Barbara, (2014). ''Scientists Bring New Rigor to Education Research.'' Scientific American, July 15, 2014, *http://www.scientificamerican.com/article/scientists-bring-new-rigor-to-education-research/.*

notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Supplemental Priorities). We are establishing Absolute Priorities 2, 3, 4, and 5 in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). These absolute priorities will apply to the FY 2017 EIR Mid-phase competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Absolute Priorities: These priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1, Supporting High-Need Students, and one additional priority. Applicants must clearly identify the specific absolute priority that the proposed project addresses.

These priorities are:

Absolute Priority 1—Supporting High-Need Students

Under this priority, we provide funding to projects that are designed to improve academic outcomes for high-need students.

Absolute Priority 2—Improving Early Learning and Development Outcomes

Under this priority, we provide funding to projects that are designed to improve early learning and development outcomes across one or more of the essential domains of school readiness (as defined in this notice) by sustaining students' improved early learning and development outcomes from Pre-K programs throughout the early elementary school years.

Absolute Priority 3—Social-Behavioral Competencies

Under this priority, we provide funding to projects that are designed to help students improve their social skills, behaviors, or underlying cognitive abilities that support social-behavioral competencies; improve students' mastery of non-cognitive skills and behaviors (such as academic behaviors, academic mindset, perseverance, self-regulation, social and emotional skills, and approaches toward learning strategies) and enhance student motivation and engagement in learning; and identify better ways of measuring the impact of students' social-behavioral competencies on student achievement.

Absolute Priority 4—Improving Low-Performing Schools

Under this priority, we provide funding to support strategies, practices, or programs that are designed to improve outcomes for students in low-performing schools (as defined in this notice).

Absolute Priority 5—Evidence-Driven Practices

Under the priority, we provide funding to projects that meet the evidence standard established in Section III.3. for this competition and are designed to improve student achievement and attainment in areas of critical national need.

Definitions

The definitions of ''national level'' and ''nonprofit'' are from 34 CFR 77.1. The definitions for ''essential domains of school readiness,'' ''high-need students,'' and ''regular high school diploma are from the Supplemental Priorities. The definitions of ''local educational agency'' and ''state educational agency'' are from Section 8101 of the ESEA, as reauthorized by ESSA. We are establishing the definitions for ''experimental study,'' ''high-minority school,'' ''independent evaluation,'' ''large sample,'' ''logic model,'' ''low-performing schools,'' ''meets What Works Clearinghouse Standards without reservations,'' ''meets What Works Clearinghouse Evidence Standards with reservations,'' ''moderate evidence,'' ''multi-site sample,'' ''practice,'' ''quasi-experimental design study,'' ''randomized controlled trial,'' ''regional level,'' ''regression discontinuity design study,'' ''relevant finding,'' ''relevant outcome,'' ''rural local educational agencies,'' ''single-case design study,'' ''strong evidence,'' and ''student achievement'' for the FY 2017 grant competition only, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Essential domains of school readiness means the domains of language and literacy development, cognition and general knowledge (including early mathematics and early scientific development), approaches toward learning (including the utilization of the arts), physical well-being and motor development (including adaptive skills), and social and emotional development.

Experimental study means a study, such as a randomized controlled trial (RCT) (as defined in this notice), that is designed to compare outcomes between two groups of individuals that are otherwise equivalent except for their assignment to either a treatment group receiving a practice or a control group that does not. In some circumstances, a finding from a regression discontinuity design study (RDD) (as defined in this notice) or findings from a collection of single-case design studies (SCDs) (as defined in this notice) may be considered equivalent to a finding from an RCT. RCTs and RDDs, and collections of SCDs, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations (as defined in this notice).

High-minority school means a school as that term is defined by a local educational agency (LEA) (as defined in this notice), which must define the term in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(g)(1)(B) of the Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA). The applicant must provide the definition(s) of high-minority schools used in its application.

High-need students means students who are at risk for educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma (as defined in this notice), who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice and are implementing it.

Large sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that each contain, on average, 10 or more students (or other single analysis units, regardless of whether these single analysis units are disaggregated in the analysis of outcomes for the groups). Multiple studies can cumulatively be used to meet the multi-site sample (as defined in this notice) and large sample requirements of moderate evidence or strong evidence, as long as each study meets the other requirements of the particular level of evidence (*i.e.,* moderate evidence or strong evidence).

Local educational agency means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a

combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also known as a theory of action) means a reasonable conceptual framework that identifies key components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes (as defined in this notice)) and describes the theoretical and operational relationships among the key components and outcomes.

Low-performing schools mean (1) elementary and secondary schools identified, at the time of submission of an application under this competition, as in need of corrective action or restructuring under the ESEA, as authorized amended by the NCLB; (2), elementary and secondary schools identified, at the time of submission of an application under this competition, as a priority or focus school by a State under ESEA flexibility; and, (3) secondary (both middle and high schools) in a State that are, at the time of submission of an application under this competition, equally as low-achieving as these Title I schools above and are eligible for, but do not receive, Title I funds.

Meets What Works Clearinghouse Evidence Standards without reservations is the highest possible rating for a study finding reviewed by the What Works Clearinghouse (WWC). Studies receiving this rating provide the highest degree of confidence that an estimated effect was caused by the practice studied. Experimental studies (as defined in this notice) may receive this highest rating. These standards are described in the WWC Procedures and Standards Handbooks, Version 3.0, which can be accessed at *http://ies.ed.gov/ncee/wwc/Handbooks.*

Meets What Works Clearinghouse Evidence Standards with reservations is the second-highest rating for a study finding reviewed by the What Works Clearinghouse (WWC). Studies receiving this rating provide a reasonable degree of confidence that an estimated effect was caused by the practice studied. Both experimental studies (as defined in this notice) (such as randomized controlled trials with high rates of sample attrition) and quasi-experimental design studies (as defined in this notice) may receive this rating if they establish the equivalence of the treatment and comparison groups in key baseline characteristics. These standards are described in the WWC Procedures and Standards Handbooks, Version 3.0, which can be accessed at *http://ies.ed.gov/ncee/wwc/Handbooks.*

Moderate evidence means the following conditions are met: (a) There is at least one experimental or quasi-experimental design study of the effectiveness of the practice with a relevant finding (as defined in this notice) that Meets What Works Clearinghouse Evidence Standards with or without reservations (*e.g.,* a quasi-experimental design study or high-attrition randomized controlled trial that establishes the equivalence of the treatment and comparison groups in student achievement at baseline); (b) the relevant finding in the study described in paragraph (a) is of a statistically significant and positive (*i.e.,* favorable) effect on a student outcome or other relevant outcome, with no statistically significant and overriding negative (*i.e.,* unfavorable) evidence on that practice from other findings on the intervention reviewed by and reported on the What Works Clearinghouse that Meet What Works Clearinghouse Evidence Standards with or without reservations; (c) the relevant finding in the study described in paragraph (a) is based on a sample that overlaps with the populations (*e.g.,* the types of student served) or settings proposed to receive the practice (*e.g.,* an after-school program studied in urban high schools and proposed for rural high schools); and (d) the relevant finding in the study described in paragraph (a) is based on a large sample (as defined in this notice) and a multi-site sample (as defined in this notice).

Multi-site sample means more than one site, where site can be defined as an LEA, locality, or State. A sample could be multi-site if it includes campuses in two or more localities (*e.g.,* cities or counties), even if the campuses all belong to the same LEA or the same postsecondary school system. Multiple studies can cumulatively meet the multi-site sample and large sample (as defined in this notice) requirements of moderate and strong evidence, as long as each study meets the other requirements of the particular level of evidence (*i.e.,* moderate evidence and strong evidence).

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Practice means an activity, strategy, or intervention included in a project. Evidence may pertain to an individual practice, or to a combination of practices (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study (QED) means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards with reservations (as defined in this notice) (but not without reservations).

Randomized controlled trial (RCT) means a study that employs random assignment of, for example, students, teachers, classrooms, or schools to receive the practice being evaluated (the treatment group) or not to receive the practice (the control group). The estimated effectiveness of the practice is the difference between the average

outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations.

Regional level describes the level of scope or effectiveness of a practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project to be considered a regional-level project, a practice must serve students in more than one LEA, unless the practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

Regression discontinuity design study (RDD) means a study that assigns the practice being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes. The effectiveness of the practice is estimated for individuals who barely qualify to receive that component. These studies, depending on design and implementation, can Meet What Works Clearinghouse Evidence Standards without reservations.

Regular high school diploma means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Relevant finding means a finding from a study regarding the relationship between (a) an activity, strategy, or intervention included as a practice of the logic model (as defined in this notice) for the proposed project, and (b) a student outcome or other relevant outcome included in the logic model for the proposed project.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed practice is designed to improve; consistent with the specific goals of a project.

Rural local educational agencies means local educational agencies with an urban-centric district locale code of 32, 33, 41, 42, or 43, which can be found at the following link: *https://nces.ed.gov/ccd/ccdLocaleCodeDistrict.asp.*

Single-case design study (SCD) means a study that use observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment. According to the What Works Clearinghouse Single Case Design Pilot Standards, a collection of these studies, depending on design and implementation (*e.g.,* including a sufficient number of cases and of data points per condition), can Meet What Works Clearinghouse Evidence Standards without reservations.

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Strong evidence means the following conditions are met: (a) There is at least one experimental study (*e.g.,* a randomized controlled trial) of the effectiveness of the practice that has a relevant finding that Meets the What Works Clearinghouse Evidence Standards without reservations (*e.g.,* a randomized controlled trial with low rates of sample attrition overall and between the treatment and control groups); (b) the relevant finding in the study described in paragraph (a) is of a statistically significant and positive (*i.e.,* favorable) effect on a student outcome or other relevant outcome, with no statistically significant and overriding negative (*i.e.,* unfavorable) evidence on that practice from other findings that Meet What Works Clearinghouse Evidence Standards with or without reservations; (c) the relevant finding in the study described in paragraph (a) is based on a sample that overlaps with the populations (*i.e.,* the types of student served) and settings proposed to receive the practice (*e.g.,* an after-school program both studied in, and proposed for, urban high schools); and (d) the relevant finding in the study described in paragraph (a) is based on a large sample and a multi-site sample.

Student achievement means—

For grades and subjects in which assessments are required under section 1111(b)(2) of Elementary and Secondary Education Act (ESEA), as amended by Every Student Succeeds Act (ESSA): (1) A student's score on such assessments; and, as appropriate (2) other measures of student learning, such as those described in the subsequent paragraph, provided that they are rigorous and comparable across schools with a local educational agency (LEA).

For grades and subjects in which assessments are not required under section 1111(b)(2) of ESEA, as amended by ESSA: (1) Alternative measures of student learning and performance, such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; (2) students learning objectives; (3) student performance on English language proficiency assessments; and (4) other measures of student achievement that are rigorous and comparable across schools within an LEA.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This grant competition is the first for the EIR program under 20 U.S.C. 1138–1138d and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priorities, definitions, and requirements under section 437(d)(1) of GEPA. These priorities, definitions, and requirements will apply to the FY 2017 grant competition only.

Program Authority: Section 4611 of the ESEA, as amended by the ESSA.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: The Administration has requested $180,000,000 for the EIR program for FY 2017, of which approximately $141,000,000 would be used, in total,

for new awards under the Early-phase, Mid-phase, and Expansion competitions. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards:

Early-phase grants: $700,000–$800,000 per year.

Mid-phase grants: $1,400,000–$1,600,000 per year.

Expansion grants: $2,750,000–$3,000,000 per year.

Estimated Average Size of Awards:

Early-phase grants: $3,750,000 for the entirety of the project period.

Mid-phase grants: $7,750,000 for the entirety of the project period.

Expansion grants: $14,500,000 for the entirety of the project period.

Estimated Number of Awards:

Early-phase grants: 24–38 awards.

Mid-phase grants: 15–20 awards.

Expansion grants: 3–5 awards.

Maximum Awards:

Early-phase grants: $4,000,000 for the entirety of the project period.

Mid-phase grants: $8,000,000 for the entirety of the project period.

Expansion grants: $15,000,000 for the entirety of the project period.

Project Period: Up to 60 months.

Under section 4611(c) of the ESEA, as amended by ESSA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the eligible applicants section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision, the Department may fund high-quality applications from rural applicants out of rank order in one or more of the EIR competitions.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) A State educational agency;

(c) The Bureau of Indian Education;

(d) A consortium of State educational agencies or LEAs;

(e) A nonprofit (as defined in this notice) organization; and

(f) A State educational agency, an LEA, a consortium described in (d), or the Bureau of Indian Education, in partnership with—

(1) A nonprofit organization;

(2) A business;

(3) An educational service agency; or

(4) An institution of higher education.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with a State educational agency; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

More information on rural applicant eligibility is in the application package.

2. a. *Cost Sharing or Matching:* Under section 4611 of the ESEA, as amended by ESSA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions on an annual basis relative to the annual budget amount of EIR grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications. Section 4611 of the ESEA, as amended by ESSA also authorizes the Secretary to waive this matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(a) The difficulty of raising matching funds for a program to serve a rural area;

(b) The difficulty of raising matching funds in areas with a concentration of local educational agencies or schools with a high percentage of students aged 5 through 17—

(1) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(2) Who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(3) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(4) Who are eligible to receive medical assistance under the Medicaid program; and

(c) The difficulty of raising funds on tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package. However, given the importance of matching funds to the long-term success of the project, the Secretary expects eligible entities to identify appropriate matching funds.

3. *Other:* The Secretary establishes the following requirements for the EIR program.

• *Innovations that Serve Kindergarten-through-Grade-12 (K–12) Students:* All grantees must implement practices that serve students who are in grades K–12 at some point during the funding period. To meet this requirement, projects that serve early learners (*i.e.,* infants, toddlers, or preschoolers) must provide services or supports that extend into kindergarten or later years, and projects that serve postsecondary students must provide services or supports during the secondary grades or earlier.

• *Evidence Standards:* To be eligible for an award, an application for a Mid-phase grant must be supported by moderate evidence for at least one population or setting.

Note: An applicant must identify up to two study citations to be reviewed against WWC Evidence Standards for the purposes of meeting the EIR evidence standard requirement. An applicant must clearly identify these citations in the Evidence form. The Department will not review a study citation that an applicant fails to clearly identify for review. In addition to the two study citations, applicants should include (1) the positive student outcomes they intend to replicate under their Mid-phase grant, (2) the intervention the applicant plans to implement, and (3) the intended student outcomes that the intervention(s) attempts to impact in the Evidence form.

An applicant must ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time. However, if the WWC determines that a study does not provide enough information on key aspects of the study design, such as

sample attrition or equivalence of intervention and comparison groups, the WWC will submit a query to the study author(s) to gather information for use in determining a study rating. Authors are asked to respond to queries within 10 business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study will be deemed ineligible under the grant competition. After the grant competition closes, the WWC will continue to include responses to author queries and will make updates to study reviews as necessary. However, the competition can only take into account information that is available at the time the competition is open.

Note: The evidence standards apply to the prior research that supports the effectiveness of the proposed project. The EIR program does not restrict the source of prior research providing evidence for the proposed project. As such, an applicant could cite prior research in the Evidence form for studies that were conducted by another entity (*i.e.,* an entity that is not the applicant) so long as the prior research studies cited in the application are relevant to the effectiveness of the proposed project.

• *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant (*i.e.,* Early-phase, Mid-phase, and Expansion grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

• *Limit on Grant Awards:* No grantee may receive in a single year new EIR grant awards that total an amount greater than the sum of the maximum amount of funds for an Expansion grant and the maximum amount of funds for an Early-phase grant for that year. For example, in a year when the maximum award value for an Expansion grant is $15 million and the maximum award value for an Early-phase grant is $4 million, no grantee may receive in a single year new grants totaling more than $19 million.

• *Partnerships:* An applicant must demonstrate sufficient partnerships with schools/LEA(s) by identifying in the application implementation schools/LEA(s) for years 1 and 2 of the grant project.

• *Evaluation:* The grantee must conduct an independent evaluation (as defined in this notice) of its project. This evaluation should be designed to meet What Works Clearinghouse Evidence Standards without reservations and must estimate the impact of the EIR-supported practice (as implemented at the proposed level of scale) on a relevant outcome. A Mid-phase grantee's evaluation must examine the cost effectiveness of its practices and identify potential obstacles and success factors to scaling that would be relevant to other organizations.

In addition, the grantee and its independent evaluator must agree to cooperate with any technical assistance provided by the Department or its contractor and comply with the requirements of any evaluation of the program conducted by the Department. This includes providing to the Department or its contractor, an updated comprehensive evaluation plan in a format and using such tools as the Department may require, as outlined in the Cooperative Agreement. Grantees must update this evaluation plan at least annually to reflect any changes to the evaluation. All of these updates must be consistent with the scope and objectives of the approved application.

• *Public Availability of Data and Results:* Applications under Mid-phase grants must include a Data Management Plan (DMP); the DMP should be no more than five pages in Appendix C that describes the applicant's plans for making the final research data from the proposed project accessible to others. Resources that may be of interest to researchers in developing a data management plan can be found at *http://ies.ed.gov/funding/researchaccess.asp.* DMPs are expected to differ depending on the nature of the project and the data collected. By addressing the items identified below, your DMP describes how you will share data under the DMP you are required to include in your application. The DMP should include the following:

(a) Type of data to be shared;

(b) Procedures for managing and for maintaining the confidentiality of personally identifiable information;

(c) Roles and responsibilities of project or institutional staff in the management and retention of research data, including a discussion of any changes to the roles and responsibilities that will occur should the Project Director/Principal Investigator and/or co-Project Directors/co-Principal Investigators leave the project or their institution;

(d) Expected schedule for data access, including how long the data will remain accessible (at least 10 years unless a shorter period of time is required to comply with applicable Federal or State laws or agreements promulgated to ensure compliance with such laws in which the destruction of records or personal information is required within a shorter period of time) and acknowledgement that the timeframe of data accessibility will be reviewed at the annual progress reviews and revised as necessary;

(e) Format of the final dataset;

(f) Dataset documentation to be provided;

(g) Method of data access (*e.g.,* provided by the Project Director/Principal Investigator, through a data archive) and how those interested in using the data can locate and access them;

(h) Whether or not a data agreement that specifies conditions under which the data will be shared will be required; and

(i) Any circumstances that prevent all or some of the data from being made accessible. This includes data that may fall under multiple statutes and, hence, must meet the confidentiality requirements for each applicable statute (*e.g.,* data covered by Common Rule for Protection of Human Subjects, Family Educational Rights and Privacy Act (FERPA), and Health Insurance Portability and Accountability Act (HIPAA)).

The costs of the DMP can be covered by the grant and should be included in the budget and explained in the budget narrative. The peer-review process will not include the DMP in the scoring of the application. The EIR team will be responsible for reviewing the completeness of the proposed DMP and will work with EIR grantees to finalize the DMP once the grant is awarded.

Recipients of awards are expected to publish or otherwise make publicly available the results of the work supported through EIR, including the evaluation report. EIR grantees must submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (ERIC), *http://eric.ed.gov.*

• *Scaling:* Mid-phase grants must scale the project to the regional or national level and include new contexts and populations for implementation. Scaling targets should be established for the number of students to be served for the total project period as well as the target number of students to be served each year of the project. Mid-phase grants must also include their scaling strategy as a component of the evaluation plan for the grant. Given that all EIR grantees are required to report on the performance measure regarding the target number of students served by the

grant, applicants should propose scaling targets that represent reasonable costs per student for the grant.

• *Management Plan:* An EIR grantee must provide an updated comprehensive management plan for the approved project in a format and using such tools as the Department may require, as outlined in the Cooperative Agreement. This management plan must include detailed information about implementation of the first year of the grant, including key milestones, staffing details, and other information that the Department may require. It must also include a complete list of performance metrics, including baseline measures and annual targets. The grantee must update this management plan at least annually to reflect implementation of subsequent years of the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. a. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: February 13, 2017.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) the absolute priority the applicant intends to address. Applicants may access this form online at *https://www.surveymonkey.com/r/GRS32YH.* Applicants that do not complete this form may still submit an application.

Pre-Application: The EIR program intends to hold Webinars and/or meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these Webinars and/or meetings will be provided on the EIR Web site at *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.*

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants should limit the application narrative for a Mid-phase grant application to no more than 30 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Mid-phase competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

We plan on posting the project narrative section of funded EIR applications on the Department's Web site. Accordingly, you may wish to request confidentiality of business information. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: December 19, 2016.

Deadline for Notice of Intent to Apply: February 13, 2017.

Pre-Application Webinars and/or Meetings: The EIR program intends to hold Webinars and/or meeting designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these Webinars and/or meetings will be provided on the EIR Web site at *http://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.*

Deadline for Transmittal of Applications: April 13, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 13, 2017.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the EIR Program, CFDA number 84.411B, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for EIR Mid-phase at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.411, not 84.411B).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to

your application as files in a read-only Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the *Grants.gov* system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202–5900. FAX: (202) 401–4123.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411B), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Mid-phase competition are from 34 CFR 75.210.

The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. Significance (Up to 15 Points)

In determining the significance of the project, the Secretary considers the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The national significance of the proposed project.

(3) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

B. Strategy to Scale (Up to 30 Points)

In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant demonstrates there is unmet demand for the process, product, strategy, or practice that will enable the applicant to reach the level of scale that is proposed in the application.

(2) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application.

(3) The feasibility of successful replication of the proposed project, if favorable results are obtained, in a variety of settings and with a variety of populations.

C. Quality of the Project Design and Management Plan (Up to 35 Points)

In determining the quality of the proposed project design, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(3) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(4) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the applicant beyond the end of the grant.

D. Quality of the Project Evaluation (Up to 20 Points)

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations.

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(3) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(4) The extent to which the evaluation plan clearly articulates the key components, mediators, and outcomes of the grant-supported intervention, as well as a measurable threshold for acceptable implementation.

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'' to the list of evaluation resources: *http://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view two optional Webinar recordings that were hosted by the Institute of Education Sciences. The first Webinar discussed strategies for designing and executing well-designed quasi-experimental design studies and is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=23.* The second Webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing studies that meet WWC evidence standards without reservations. This Webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice. For Mid-phase grant applications we intend to conduct a single-tier review.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the

Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The overall purpose of the EIR program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the EIR Mid-phase grants.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees that implement an evaluation that provides information about the key practices and the approach of the project so as to facilitate replication; (5) the percentage of grantees that implement an evaluation that provides information on the cost effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reach the targeted number of high-need students specified in the application; (3) the percentage of grantees that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (4) the percentage of grantees with a completed well-designed, well-implemented and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; (5) and the percentage of grantees with a completed evaluation that provided information on the cost effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202–5900. Telephone: (202) 453–7122. FAX: (202) 401–4123 or by email: *eir@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 9, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–30084 Filed 12–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1758–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–12–09_Addtl compliance re revisions to SSR tariff provisions to be effective 8/22/2016.
Filed Date: 12/9/16.
Accession Number: 20161209–5084.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–382–000.
Applicants: CED Ducor Solar 1, LLC.
Description: Report Filing: Supplement to Market-Based Rate Application to be effective N/A.
Filed Date: 12/9/16.
Accession Number: 20161209–5087.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–383–000.
Applicants: CED Ducor Solar 2, LLC.
Description: Report Filing: Supplement to Market-Based Rate Application to be effective N/A.
Filed Date: 12/9/16.
Accession Number: 20161209–5088.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–384–000.
Applicants: CED Ducor Solar 3, LLC.
Description: Report Filing: Supplement to Market-Based Rate Application to be effective N/A.
Filed Date: 12/9/16.
Accession Number: 20161209–5089.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–505–000.
Applicants: Hydro-Quebec Energy Services (U.S.) Inc.
Description: Request for Limited Waiver of H.Q. Energy Services (U.S.) Inc.
Filed Date: 12/7/16.
Accession Number: 20161207–5207.
Comments Due: 5 p.m. ET 12/21/16.

Docket Numbers: ER17–510–000.
Applicants: PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: Queue Position NQ127, Original Service Agreement No. 4586 to be effective 2/8/2017.
Filed Date: 12/8/16.
Accession Number: 20161208–5138.
Comments Due: 5 p.m. ET 12/29/16.

Docket Numbers: ER17–511–000.
Applicants: Weyerhaeuser NR Company.
Description: Notice of Cancellation of market-based rate tariff, et al. of Weyerhaeuser NR Company.
Filed Date: 12/8/16.
Accession Number: 20161208–5151.
Comments Due: 5 p.m. ET 12/29/16.

Docket Numbers: ER17–512–000.
Applicants: Virginia Electric and Power Company.
Description: Compliance filing: Baseline—Rate Schedule FERC No. 134 to be effective 9/1/2006.
Filed Date: 12/9/16.
Accession Number: 20161209–5001.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–513–000.
Applicants: Alabama Power Company.
Description: 205(d) Rate Filing: PowerSouth NITSA Amendment Filing (Add Burkville Delivery Point) to be effective 11/9/2016.
Filed Date: 12/9/16.
Accession Number: 20161209–5086.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–514–000.
Applicants: Alabama Power Company.
Description: 205(d) Rate Filing: Amendment of Southern's Tariff Volume No. 4 to be effective 2/8/2017.
Filed Date: 12/9/16.
Accession Number: 20161209–5103.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–515–000.
Applicants: PacifiCorp.
Description: 205(d) Rate Filing: BPA NITSA (SE Idaho Area) Rev 2 to be effective 12/1/2016.
Filed Date: 12/9/16.
Accession Number: 20161209–5104.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–516–000.
Applicants: Pacific Gas and Electric Company.
Description: 205(d) Rate Filing: Transmission Access Charge Balancing Account Adjustment (TACBAA) 2017 to be effective 3/1/2017.
Filed Date: 12/9/16.
Accession Number: 20161209–5121.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–517–000.
Applicants: Midcontinent Independent System Operator, Inc., Great River Energy, Northern States Power Company, a Minnesota corporation.
Description: 205(d) Rate Filing: 2016–12–09_SA 2980 Northern States Power-Great River Energy TIA (Quarry) to be effective 12/10/2016.
Filed Date: 12/9/16.
Accession Number: 20161209–5183.
Comments Due: 5 p.m. ET 12/30/16.

Docket Numbers: ER17–518–000.
Applicants: Midcontinent Independent System Operator, Inc., Northern States Power Company, a Minnesota corporation, Great River Energy.
Description: 205(d) Rate Filing: 2016–12–09_SA 2981 Northern States Power-Great River Energy TIA (St. Bonifacius) to be effective 12/10/2016.
Filed Date: 12/9/16.
Accession Number: 20161209–5185.
Comments Due: 5 p.m. ET 12/30/16.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH17–4–001.
Applicants: Starwood Energy Group Global, L.L.C.
Description: Starwood Energy Group Global, L.L.C. submits FERC 65–B Material Change in Facts of Waiver Notification.
Filed Date: 12/9/16.
Accession Number: 20161209–5082.
Comments Due: 5 p.m. ET 12/30/16.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–1069–000.
Applicants: AEP OnSite Partners, LLC.
Description: Refund Report of AEP OnSite Partners, LLC [Clyde].
Filed Date: 12/8/16.
Accession Number: 20161208–5178.
Comments Due: 5 p.m. ET 12/29/16.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR17–2–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Revisions to the Rules of Procedure.

Filed Date: 12/9/16.

Accession Number: 20161209–5094.

Comments Due: 5 p.m. ET 12/30/16.

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: December 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30165 Filed 12–14–16; 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: RP17–251–000.

Applicants: Chandeleur Pipe Line, LLC.

Description: Fuel and Line Loss Allowance Calculation filing of Chandeleur Pipe Line, LLC under RP17–251.

Filed Date: 12/2/16.

Accession Number: 20161202–5350.

Comments Due: 5 p.m. ET 12/14/16.

Docket Numbers: RP17–252–000.

Applicants: UGI Sunbury, LLC.

Description: § 4(d) Rate Filing: UGI Sunbury Pipeline—Baseline Filing to be effective 1/1/2017.

Filed Date: 12/6/16.

Accession Number: 20161206–5190.

Comments Due: 5 p.m. ET 12/19/16.

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: RP17–244–001.

Applicants: Tallgrass Interstate Gas Transmission, L.

Description: Tariff Amendment: Erata to NRA Amend Hastings—Trenton to be effective 12/1/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5000.

Comments Due: 5 p.m. ET 12/19/16.

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: December 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30129 Filed 12–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1818–012; ER10–1817–013; ER10–1819–014; ER10–1820–017.

Applicants: Public Service Company of Colorado.

Description: Second Supplement to January 14, 2016 Triennial Market Power Analysis and Notice of Change in Status of Public Service Company of Colorado, et al.

Filed Date: 12/7/16.

Accession Number: 20161207–5209.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–27–001.

Applicants: Nevada Power Company.

Description: Compliance filing: OATT Additional Revisions Attachment N and O to be effective 10/14/2016.

Filed Date: 12/8/16.

Accession Number: 20161208–5085.

Comments Due: 5 p.m. ET 12/29/16.

Docket Numbers: ER17–75–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Queue Position X4–048/Y2–089, Service Agreement No. 3837 to be effective 10/1/2016.

Filed Date: 12/7/16.

Accession Number: 20161207–5187.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–394–000.

Applicants: KMC Thermo, LLC.

Description: Supplement to November 18, 2016 KMC Thermo, LLC tariff filing (Notice of Change in Status).

Filed Date: 12/7/16.

Accession Number: 20161207–5213.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–506–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2016–12–08_SA 2979 Ameren Illinois-J. Aron & Co. FCA (Hennepin) to be effective 10/13/2016.

Filed Date: 12/8/16.

Accession Number: 20161208–5099.

Comments Due: 5 p.m. ET 12/29/16.

Docket Numbers: ER17–507–000.

Applicants: Georgia Power Company.

Description: § 205(d) Rate Filing: GPCo 2016 PBOP Filing to be effective 1/1/2016.

Filed Date: 12/8/16.

Accession Number: 20161208–5118.

Comments Due: 5 p.m. ET 12/29/16.

Docket Numbers: ER17–508–000.

Applicants: Mississippi Power Company.

Description: § 205(d) Rate Filing: PBOP 2016 Filing to be effective 1/1/2016.

Filed Date: 12/8/16.

Accession Number: 20161208–5119.

Comments Due: 5 p.m. ET 12/29/16.

Docket Numbers: ER17–509–000.

Applicants: Southern Electric Generating Company.

Description: § 205(d) Rate Filing: SEGCo 2016 PBOP Filing to be effective 1/1/2016.

Filed Date: 12/8/16.

Accession Number: 20161208–5122.

Comments Due: 5 p.m. ET 12/29/16.

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: December 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30128 Filed 12–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14757–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On February 19, 2016, Energy Resources USA, Inc. (Energy Resources) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the New Savannah Bluff Lock and Dam Hydroelectric Project (project) to be located at the U.S. Army Corps of Engineers' New Savannah Bluff Lock and Dam on the Savannah River in Aiken County, South Carolina. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 300-foot-long, 90-foot-wide intake area; (2) a 98-foot-long, 45-foot-wide powerhouse containing two vertical Kaplan turbine-generator units with a total capacity of 8 megawatts; (3) a 350-foot-long, 120-foot-wide tailrace; (4) a 60-foot-long, 50-foot-wide substation; and (5) a 6.54-mile-long, 69 kV transmission line. The estimated annual generation of the project would be 68.5 gigawatt-hours, and would operate as directed by the U.S. Army Corps of Engineers.

Applicant Contact: Mr. Ander Gonzalez, Business Development Manager, Energy Resources USA, Inc., 350 Lincoln Road, 2nd floor, Miami, Florida 22139; phone: (954) 248–8425.

FERC Contact: Navreet Deo; phone: (202) 502–6304.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14757–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14757–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–30067 Filed 12–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–43–000.

Applicants: Boulder Solar II, LLC, AEP Renewables, LLC.

Description: Joint Application of Boulder Solar II, LLC and AEP Renewables, LLC for Authorization of Transaction under Section 203 of the Federal Power Act and Requests for Waivers, Confidential Treatment, and Expedited Action.

Filed Date: 12/6/16.

Accession Number: 20161206–5276.

Comments Due: 5 p.m. ET 12/27/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–492–000.

Applicants: Lark Energy Developments, Inc.

Description: Petition for Limited Waiver of Tariff Provisions and Request for Expedited Action of Lark Energy Developments, Inc.

Filed Date: 12/6/16.

Accession Number: 20161206–5168.

Comments Due: 5 p.m. ET 12/16/16.

Docket Numbers: ER17–495–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Attachment AE to Add Term Instantaneous Load Capacity to be effective 2/4/2017.

Filed Date: 12/6/16.

Accession Number: 20161206–5250.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–496–000.

Applicants: Peak View Wind Energy LLC, Black Hills/Colorado Electric Utility Company, LP.

Description: Black Hills/Colorado Electric Utility Company, LP submits Notice of Cancellation of Market-Based Rate Tariff on behalf of Peak View Wind Energy LLC.

Filed Date: 12/6/16.

Accession Number: 20161206–5278.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–497–000.

Applicants: International Transmission Company.

Description: Request for Limited Waiver of Tariff Provisions and Expedited Action of International Transmission Company.

Filed Date: 12/6/16.

Accession Number: 20161206–5280.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–498–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: § 205(d) Rate Filing: Temporary Credit Extension to be effective 1/1/2017.

Filed Date: 12/7/16.

Accession Number: 20161207–5047.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–499–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement Nos. 174, 357, and 358 to be effective 11/7/2016.

Filed Date: 12/7/16.

Accession Number: 20161207–5077.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–500–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 20161207_Revised SAP and Clean Up Filing to be effective 1/1/2016.

Filed Date: 12/7/16.

Accession Number: 20161207–5083.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–501–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 20161207_Revised SAP and Clean Up Filing to be effective 4/16/2016.

Filed Date: 12/7/16.

Accession Number: 20161207–5084.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–502–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: High Winds GSFA and GIA (SA 40) to be effective 2/7/2017.

Filed Date: 12/7/16.

Accession Number: 20161207–5113.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–503–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2016–12–07 Certificate of Concurrence SCE Western Antelope Dry Ranch SGIA to be effective 12/1/2016.

Filed Date: 12/7/16.

Accession Number: 20161207–5126.

Comments Due: 5 p.m. ET 12/28/16.

Docket Numbers: ER17–504–000.

Applicants: Cedar Creek Wind Energy, LLC.

Description: § 205(d) Rate Filing: Category 1 Notice re NW Region to be effective 12/8/2016.

Filed Date: 12/7/16.

Accession Number: 20161207–5136.

Comments Due: 5 p.m. ET 12/28/16.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM17–2–000.

Applicants: East Kentucky Power Cooperative, Inc.

Description: Amendment to November 4, 2016 Application of East Kentucky Power Cooperative, Inc. for the termination of the obligation to purchase power from qualifying facilities.

Filed Date: 12/7/16.

Accession Number: 20161207–5131.

Comments Due: 5 p.m. ET 1/4/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30127 Filed 12–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ17–4–000]

City of Pasadena, California; Notice of Filing

Take notice that on December 5, 2016, City Pasadena, California submitted its tariff filing: City of Pasadena, California 2017 Transmission Revenue Balancing Account Adjustment Update to be effective 1/1/2017.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 27, 2016.

Dated: December 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30130 Filed 12–14–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0104; FRL–9955–54]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period October 1, 2015 to September 30, 2016 to control unforeseen pest outbreaks.

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: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

determine whether this document applies to them. Potentially affected entities may include:

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0104, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, and the duration of the exemption.

III. Emergency Exemptions

A. U. S. States and Territories

Alabama

Department of Agriculture and Industries

Specific exemptions: EPA authorized the use of sulfoxaflor on cotton to control tarnished plant bug; June 7 to October 31, 2016.

EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

Arizona

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; September 22, 2016 to April 8, 2017.

Arkansas

State Plant Board

Crisis exemption: On July 21, 2016, the Arkansas State Plant Board declared a crisis exemption to allow use of flupyradifurone on sweet sorghum to control sugarcane aphids. The use was expected to be needed beyond the 15 days allowed under a crisis exemption and a specific exemption request was also submitted.

Specific exemptions: EPA authorized the use of sulfoxaflor on cotton to control tarnished plant bug; June 7 to October 31, 2016.

EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

California

Department of Pesticide Regulation

Crisis exemptions: On August 19, 2016, the California Department of Pesticide Regulation declared a crisis exemption to allow use of bifenthrin on pomegranate to control leaffooted plant bug. The use was expected to be needed beyond the 15 days allowed under a crisis exemption and a specific exemption request was also submitted.

On June 30, 2016, the California Department of Pesticide Regulation declared a crisis exemption to allow use of methoxyfenozide in rice to control armyworms. The use was expected to be needed beyond the 15 days allowed under a crisis exemption and a specific exemption request was also submitted.

Specific exemption: EPA authorized the use of bifenthrin on avocado to control polyphagous shot hole borer; April 8, 2016 to April 8, 2017.

Colorado

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; July 11, 2016 to April 8, 2017.

Delaware

Department of Agriculture

Specific exemptions: EPA authorized the use of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug; June 16 to October 15, 2016.

EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; May 31 to October 15, 2016.

Florida

Department of Agriculture and Consumer Services

Crisis exemptions: On March 4, 2016, the Florida Department of Agriculture and Consumer Services declared crisis exemptions to allow use of the antibiotics, oxytetracycline and streptomycin in citrus to help suppress and manage Huanglongbing (HLB) disease (also known as citrus greening). The uses were expected to be needed beyond the 15 days allowed under a crisis exemption and specific exemption requests were also submitted.

Specific exemptions: EPA authorized the use of the antibiotics, oxytetracycline and streptomycin in citrus to help suppress and manage Huanglongbing (HLB) disease (also known as citrus greening). August 15 to December 31, 2016.

EPA authorized the use of tolfenpyrad on fruiting vegetables crop group 8–10

to control various thrips; February 29, 2016 to February 28, 2017.

EPA authorized the use of clothianidin on immature (3 to 5 years old) citrus trees to manage transmission of Huanglongbing (HLB) disease vectored by the Asian citrus psyllid; January 15 to October 31, 2016.

Quarantine exemption: EPA authorized the use of naled in a bait formulation to eradicate invasive (non-native) Tephritid fruit fly species statewide in Florida, where detected; June 24, 2016 to June 24, 2017.

Georgia

Department of Agriculture

Specific exemptions: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

EPA authorized the use of fluridone in cotton to control Palmer amaranth; December 18, 2015 to August 31, 2016.

Idaho

Department of Agriculture

Specific exemption: EPA authorized the use of hexythiazox on sugarbeet to control spider mites; April 19 to September 30, 2016.

Illinois

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; July 19, 2016 to April 8, 2017.

Kansas

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

Kentucky

Department of Agriculture

Crisis exemption: On July 21, 2016, the Arkansas State Plant Board declared a crisis exemption to allow use of flupyradifurone on sweet sorghum to control sugarcane aphids. The use was expected to be needed longer than the 15 days allowed under a crisis exemption and a specific exemption request was also submitted.

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; July 19, 2016 to April 8, 2017.

Louisiana

Department of Agriculture and Forestry

Crisis exemption: On June 21, 2016, the Louisiana Department of Agriculture and Forestry declared a crisis exemption to allow use of acetamiprid in sugarcane to control the West Indian canefly. The use was expected to be needed longer than the 15 days allowed under a crisis exemption, and a specific exemption request was also submitted.

Specific exemptions: EPA authorized the use of sulfoxaflor on cotton to control tarnished plant bug; June 7 to October 31, 2016.

EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

Quarantine exemption: EPA authorized the use of fipronil as an expansion of the registered use, to control an invasive crazy ant species (commonly referred to as the tawny crazy ant) around the outside of manmade structures in counties where the ant has been confirmed; April 1 2016 to April 1, 2019.

Maryland

Department of Agriculture

Specific exemptions: EPA authorized the use of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug; June 16 to October 15, 2016.

EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; May 31 to October 15, 2016.

Michigan

Department of Agriculture

Crisis exemption: On July 21 2016, the Michigan Department of Agriculture authorized a crisis exemption to allow use of fluopicolide on hops to control downy mildew. A previously withdrawn specific exemption request was resubmitted since use was needed until October 1, 2016, beyond the 15 days allowed under a crisis exemption.

Specific exemption: EPA authorized the use of fluensulfone on carrots to control plant-parasitic nematodes; April 20 to June 15, 2016.

Mississippi

Department of Agriculture and Commerce

Crisis exemption: On July 21, 2016, the Mississippi Department of Agriculture and Commerce declared a crisis exemption to allow use of flupyradifurone on sweet sorghum to control sugarcane aphids. The use was expected to be needed beyond the 15 days allowed under a crisis exemption and a specific exemption request was also submitted.

Specific exemptions: EPA authorized the use of sulfoxaflor on cotton to control tarnished plant bug; June 7 to October 31, 2016.

EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

Quarantine exemption: EPA authorized the use of fipronil as an expansion of the registered use, to control an invasive crazy ant species (commonly referred to as the tawny crazy ant) around the outside of manmade structures in counties where the ant has been confirmed; April 1 2016 to April 1, 2019.

Missouri

Department of Agriculture

Specific exemptions: EPA authorized the use of sulfoxaflor on cotton to control tarnished plant bug; June 7 to October 31, 2016.

EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 11, 2016 to April 8, 2017.

Nebraska

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; June 2, 2016 to April 8, 2017.

Nevada

Department of Agriculture

Specific exemption: EPA authorized the use of chlorantraniliprole on teff to control armyworm; July 18, 2016 to July 18, 2017.

New Jersey

Department of Environmental Protection

Specific Exemption: EPA authorized the use of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug; August 17 to October 15, 2016.

New Mexico

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; June 28, 2016 to April 8, 2017.

New York

Department of Environmental Conservation

Specific exemptions: EPA authorized the uses of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; July 12 to October 15, 2016.

North Carolina

Department of Agriculture and Consumer Services

Crisis exemption: On July 21, 2016, the North Carolina Department of Agriculture and Consumer Services

declared a crisis exemption to allow use of flupyradifurone on sweet sorghum to control sugarcane aphids. The use was expected to be needed beyond the 15 days allowed under a crisis exemption and a specific exemption request was also submitted.

On January 11, 2016, the North Carolina Department of Agriculture declared a crisis exemption for the postharvest use of thiabendazole on sweet potatoes to control black rot disease. The use was expected to be needed until December 31, 2016 and a request for a specific exemption was also submitted.

Specific exemptions: EPA authorized the use of thiabendazole on sweet potatoes to control black rot disease; July 18 to December 31, 2016.

EPA authorized the uses of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; July 12 to October 15, 2016.

EPA authorized the use of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug; June 16 to October 15, 2016.

EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

Oklahoma

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

Oregon

Department of Agriculture

Specific exemption: EPA authorized the use of hexythiazox on sugarbeet to control spider mites; April 19 to September 30, 2016.

Pennsylvania

Department of Agriculture

Specific exemptions: EPA authorized the use of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug; June 16 to October 15, 2016.

EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; May 31 to October 15, 2016.

EPA authorized the use of thiabendazole on mushroom to control *Trichoderma* green mold; March 11, 2016 to March 11, 2017.

South Carolina

Department of Pesticide Regulation

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 25, 2016 to April 8, 2017.

Tennessee

Department of Agriculture

Crisis exemption: On July 21, 2016, the Tennessee Department of Agriculture declared a crisis exemption to allow use of flupyradifurone on sweet sorghum to control sugarcane aphids. The use was expected to be needed beyond the 15 days allowed under a crisis exemption and a specific exemption request was also submitted.

Specific exemptions: EPA authorized the use of sulfoxaflor on cotton to control tarnished plant bug; June 7 to October 31, 2016.

EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 5, 2016 to April 8, 2017.

Texas

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; April 8, 2016 to April 8, 2017.

Quarantine exemption: EPA authorized the use of fipronil as an expansion of the registered use, to control an invasive crazy ant species (commonly referred to as the tawny crazy ant) around the outside of manmade structures in counties where the ant has been confirmed; April 1, 2016 to April 1, 2019.

Virginia

Department of Agriculture and Consumer Services

Specific exemptions: EPA authorized the use of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug; June 16 to October 15, 2016.

EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; May 31 to October 15, 2016.

EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphids; May 16, 2016 to April 8, 2017.

Washington

Department of Agriculture

Crisis exemptions: On the August 26, 2016, the Washington Department of Agriculture declared a crisis exemption for use of lambda-cyhalothrin on asparagus to control the European asparagus aphid. The use season was expected to last until October 31, 2016, and a specific exemption request was also submitted.

On May 19, 2016, the Washington Department of Agriculture declared a crisis exemption for use of isofetamid on blackberry, blueberry, and raspberry to control *Botrytis cinerea* (gray mold). The use was expected to be needed beyond the 15 days allowed under a crisis exemption and a specific exemption request was also submitted.

Specific exemptions: EPA authorized the use of lambda-cyhalothrin on asparagus to control the European asparagus aphid; September 19 to October 31, 2016.

EPA authorized the use of isofetamid on blackberry, blueberry, and raspberry to control *Botrytis cinerea* (gray mold); July 27 to October 30, 2016.

West Virginia

Department of Agriculture

Specific exemptions: EPA authorized the use of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug; June 16 to October 15, 2016.

EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; May 31 to October 15, 2016.

B. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspector Service

Quarantine exemptions: EPA authorized the use of citric acid to treat for disinfection of porous and nonporous surfaces contaminated with Foot-and-Mouth Disease Virus, African Swine Fever Virus, Low Pathogenic Avian Influenza Virus, and high Pathogenic Avian Flu Influenza Virus; February 4, 2016 to February 4, 2019.

EPA authorized the use of a mixture of potassium peroxymonosulfate and propylene glycol for disinfection of nonporous surfaces associated with poultry facilities infected with highly pathogenic avian influenza virus; January 20, 2016 to January 20, 2019.

Centers for Disease Control and Prevention

Public health exemptions: EPA authorized use of deltamethrin to help control *Aedes* species of mosquitoes, vectors of the zika virus, in Puerto Rico where the zika virus is being locally transmitted, and *Aedes* mosquito populations have developed resistance to other materials commonly used for mosquito control. EPA authorized three different uses of deltamethrin as follows: Pre-treated mosquito bed nets, May 10, 2016 to May 10, 2017; pre-treated window curtain coverings, May 18, 2016 to May 18, 2017; a tablet form used to prepare a solution for treatment of mosquito bed nets and curtains, May 19, 2016 to May 19, 2017.

EPA authorized use of pyriproxyfen (a larvicide) and *Beauveria bassiana* (a

fungus pathogenic to adult insects) to help control *Aedes* species of mosquitoes, vectors of the zika virus. Deployment is in a container ''trap'' designed to attract the egg-laying adult mosquito, and was initially targeted for Puerto Rico, where the zika virus was being locally transmitted. While in the trap depositing eggs, the adult mosquito is coated with the pesticide mixture, and then visits other egg-laying sites, distributing pyriproxyfen in the process. The pyriproxyfen kills the larva by preventing development into an adult, while the *Beauvaria bassiana* slowly kills the adult mosquito over 8–10 days. Use is allowed in other areas of the U.S. if zika-transmitting mosquitoes are detected. May 6, 2016 to May 6, 2017.

Department of Defense

Armed Forces Pest Management Board

Specific exemption. EPA authorized use of permethrin for treatment of unoccupied military aircraft to comply with disinsection requirements of Italy and other counties, to prevent dissemination of potential insect disease vectors such as the *Aedes* mosquito, vector of the zika virus. July 13, 2016 to July 13, 2017.

National Aeronautics and Space Administration

Specific exemption. EPA authorized use of ortho-phthalaldehyde, immobilized to a porous resin, to treat the International Space Station (ISS) internal active thermal control system (IATCS) coolant for control of aerobic and microaerophilic water bacteria and unidentified gram negative rods. August 31, 2016 to August 31, 2017.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 30, 2016,

Michael Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–30175 Filed 12–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9956–49–Region 6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The Environmental Protection Agency is giving notice of two proposed administrative settlements concerning the Scrub-A-Dubb Barrel Company Superfund Site, located in the City of Lubbock, Lubbock County, Texas.

DATES: Comments must be submitted on or before January 17, 2017.

ADDRESSES: The proposed settlements and additional background information relating to the settlements are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed settlements may be obtained from Robert Werner, Enforcement Officer, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–6724. Comments should reference the Scrub-A-Dubb Barrel Company Superfund Site, located in the City of Lubbock, Lubbock County, Texas and EPA CERCLA Docket Number 06–09–16 for the Enterprise Products BBCT LLC settlement and EPA CERCLA Docket Number 06–10–16 for the Foster Testing, Inc. settlement and should be addressed to Robert Werner, Enforcement Officer, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Amy Salinas, Attorney, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–8063.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1), notice is hereby given of two proposed administrative settlements concerning the Scrub-A-Dubb Barrel Company Superfund Site, located in the City of Lubbock, Lubbock County, Texas.

The settlements require two settling parties, Enterprise Products BBCT, LLC, and Foster Testing, Inc., to pay a total of $147,800.00 as payment of response costs to the Hazardous Substances Superfund. The settlements include a covenant not to sue pursuant to Section 107 of CERCLA, 42, U.S.C. 9607.

For thirty (30) days beginning the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

Dated: November 24, 2016.

Ron Curry,

Regional Administrator (6RA).

[FR Doc. 2016–29886 Filed 12–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0675; FRL–9956–03]

TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amended the Toxic Substance Control Act (TSCA). TSCA, as amended, requires EPA to review the size standards for small manufacturers and processors, which are currently used in connection with reporting regulations under TSCA Section 8(a). In particular, EPA must make a determination whether a revision of those standards is warranted. EPA's preliminary determination is that revisions to currently codified size standards for TSCA Section 8(a) are indeed warranted. As part of the ongoing review process, the EPA is requesting public comment on whether a revision of the current size standard definitions is warranted at this time.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0675, 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:* Lynne Blake-Hedges, Chemistry, Economics, and Sustainable Strategies Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8807; email address: *blake-hedges.lynne@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.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture or process chemical substances or mixtures. 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:

- Basic Chemical Manufacturers (NAICS code 3251);
- Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filament Manufacturers (NAICS code 3252);
- Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturers (NAICS code 3255);
- Paint, Coating, and Adhesive Manufacturers (NAICS code 3255);
- Other Chemical Product and Preparation Manufacturers (NAICS code 3259); and
- Petroleum Refineries (NAICS code 32411).

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. What action is the agency taking?

On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amends the Toxic Substance Control Act (TSCA), the nation's primary chemicals management law. A summary of the new law, is available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act.* This particular action involves the revised TSCA section 8(a)(3)(C), which requires EPA, after consultation with the Administrator of the Small Business Administration, to review the adequacy of the standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of TSCA sections 8(a)(1) and 8(a)(3). TSCA furthermore requires that (after consulting with the Small Business Administration and providing public notice and an opportunity for comment) EPA make a determination as to whether revision of the standards is warranted.

In the 1980s, the EPA issued standards that are used in identifying which businesses qualify as small manufacturers and processors for purposes of the reporting and recordkeeping rules issued under TSCA section 8(a). (Under TSCA, manufacture includes import, so references to chemical manufacture include chemical import.) These size standards describe who is generally exempt from reporting requirements under TSCA section 8(a). This exemption arises because TSCA section 8(a)(1) generally exempts small manufacturers and processors from reporting requirements, except in limited cases set forth in TSCA section 8(a)(3).

In 1982, the EPA finalized standards for determining which manufacturers of a reportable chemical substance qualified as small manufacturers for purposes of a particular set of TSCA section 8(a) rules. These are the Preliminary Assessment Information Reporting (PAIR) rules, codified in 40 CFR part 712, subpart B. The small manufacturer standard for PAIR rules is found at 40 CFR 712.25(c).

In 1988 EPA established general small manufacturer standards for use in other rules issued under TSCA section 8(a) (40 CFR 704.3). For example, these are the standards that now apply to the Chemical Data Reporting (CDR) rule (40 CFR part 711). The general standards are somewhat different from the earlier standards that are codified for use in the PAIR rules. The general small manufacturer standard is as follows:

Small manufacturer or importer means a manufacturer or importer that meets either of the following standards:

(1) *First standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition.

(2) *Second standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales values when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide **Federal Register** notification when changing the total annual sales values.

Certain rules issued under TSCA section 8(a) directly codify slight variations of the general small manufacturer standards at 40 CFR 704.3. (See, *e.g.,* 40 CFR 704.45). Other rules issued under TSCA section 8(a) establish (for use in a particular rule) analogous standards for small processors (See, *e.g.,* 40 CFR 704.33).

As an initial step in evaluating whether a change in these current size standards are warranted, EPA reviewed the change in the Producer Price Index (PPI) for Chemicals and Allied Products between 1988 (the year the size

standards were last revised) and 2015 (the most recent year of PPI data available) (Ref. 1). EPA found that the PPI has changed by 129 percent, far exceeding the 20 percent inflation index specified as a level above which EPA may adjust annual sales levels in the current standard if deemed necessary. Furthermore, among the more than 500 revenue-based size standards set by the Small Business Administration (SBA), the lowest is $5.5 million, and more than 75% of those standards are in excess of $7.5 million. Some revenue-based standards are as high as $38.5 million. Thus, EPA's existing $4 million annual sales standard is an outlier at the low end of this range. Because of the magnitude of the increase in the PPI since the last revision of the size standards and the current annual sales standard is comparatively low given current revenue-based size standards developed by SBA, EPA has preliminarily determined that a revision to currently codified size standards is warranted.

EPA is requesting public comment on the adequacy of the current standards and whether revision of the standards is warranted. In the event that EPA determines that a revision to the standards is warranted, any such revision would occur by subsequent rulemaking, which would involve a further opportunity for public notice and comment. Accordingly, the scope of this first action (*i.e.,* the determination) will not necessarily include responding to stakeholder comments as to what specific amendments ought to be made to the standards.

EPA is also in the process of consulting with the SBA on the adequacy of the current standards and whether revision of the standards is warranted. (Ref. 2.) EPA has requested that SBA provide its input within 15 business days of receiving EPA's consultation request. When SBA's consultation response becomes available, EPA plans to add that response to the docket for this preliminary determination.

III. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. Bureau of Labor Statistics. ''Producer Price Index, Series WPU06, Chemicals and Allied Products, 1933–2015''. Retrieved November 14, 2016 from *http://data.bls.gov/cgi-bin/srgatet.*
2. Jones, Jim. Letter to Maria Contreras-Sweet. ''Consultation under Section 8(a)(3)(C) the Toxic Substances Control Act''. December 7, 2016.

Authority: 15 U.S.C. 2607(a)(3)(C).

Dated: December 7, 2016.

Jim Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2016–30176 Filed 12–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9955–76]

Pesticide Product Registrations; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol or 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: Steve Knizner, Antimicrobials Division (AD) (7510P), main telephone number: (703) 305–7090, email address: *ADFRNotices@epa.gov;* Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

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).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the application summary of interest.

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.*

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, EPA 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. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. 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 these applications. Notice of receipt of these applications does not imply a decision by EPA on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation Web site for additional information on this process *(http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*). EPA received the following applications to register new uses for pesticide products containing currently registered active ingredients:

1. *EPA Registration Number:* 279–3055. *Docket ID Number:* EPA–HQ–OPP–2016–0352. *Applicant:* FMC Corporation, Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103. *Active Ingredient:* Bifenthrin. *Product Type:* Insecticide. *Proposed Use:* Avocado; Low Growing Berry Subgroup 13–07G; Peach Subgroup 12–12B; Pepper/Eggplant Subgroup 8–10B; Pome Fruit Group 11–10 (except Mayhaw); Pomegranate; Small Fruit Vine Climbing Subgroup 13–07F (except Fuzzy Kiwifruit); and Tomato Subgroup 8–10A. *Contact:* RD.

2. *EPA Registration Number:* 279–3108. *Docket ID Number:* EPA–HQ–OPP–2016–0352. *Applicant:* FMC Corporation, Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103. *Active Ingredient:* Bifenthrin. *Product Type:* Insecticide. *Proposed Use:* Caneberries (Subgroup 13–07A); Cranberry; Fruit, Citrus Group 10–10; Low Growing Berries (Subgroup 13–07G) except Cranberry; Nut, Tree Group 14–12; Peach Subgroup 12–12B; Pepper/Eggplant (Subgroup 8–10B); Pome Fruit Group 11–10 (except Mayhaw); Pomegranate; Small Fruit Vine Climbing except Fuzzy Kiwifruit (Subgroup 13–07F); and Tomato (Subgroup 8–10A). *Contact:* RD.

3. *EPA Registration Number:* 279–3313. *Docket ID Number:* EPA–HQ–OPP–2016–0352. *Applicant:* FMC Corporation, Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103. *Active Ingredient:* Bifenthrin. *Product Type:* Insecticide. *Proposed Use:* Brassica, Leafy Greens Subgroup 4–16B; Caneberries (Subgroup 13–07A); Fruit, Citrus Group 10–10; Nut, Tree Group 14–12; Peach Subgroup 12–12B; Pepper/Eggplant (Subgroup 8–10B); Pome Fruit Group 11–10 (except Mayhaw); Pomegranate; Small Fruit Vine Climbing except Fuzzy Kiwifruit (Subgroup 13–07F); and Tomato (Subgroup 8–10A). *Contact:* RD.

4. *EPA Registration Numbers:* 279–3315 and 279–3329. *Docket ID Number:* EPA–HQ–OPP–2016–0352. *Applicant:* FMC Corporation, Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103. *Active Ingredient:* Bifenthrin, zeta-Cypermethrin. *Product Type:* Insecticide. *Proposed Use:* Avocado. *Contact:* RD.

5. *EPA Registration Number:* 11678–66. *Docket ID Number:* EPA–HQ–OPP–2016–0352. *Applicant:* ADAMA Makhteshim, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. *Active Ingredient:* Bifenthrin. *Product Type:* Insecticide. *Proposed Use:* Cranberry. *Contact:* RD.

6. *EPA File Symbol:* 46597–U. *Docket ID Number:* EPA–HQ–OPP–2016–0605. *Applicant:* Chemstar Corp., 120 Interstate West Parkway, Suite 100, Lithia Springs, GA 30122. *Active Ingredient:* Hypochlorous Acid. *Product Type:* Antimicrobial. *Proposed Use:* End-use product for antimicrobial fruit and vegetable wash. *Contact:* AD.

7. *EPA Registration Numbers:* 66222–99, 66222–236, and 66222–261. *Docket ID Number:* EPA–HQ–OPP–2016–0352. *Applicant:* Makhteshim Agan of North America, Inc. (d/b/a ADAMA), 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. *Active Ingredient:* Bifenthrin. *Product Type:* Insecticide. *Proposed Use:* Cranberry. *Contact:* RD.

8. *EPA Registration Number:* 73049–45. *Docket ID Number:* EPA–HQ–OPP–2016–0659. *Applicant:* Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. *Active Ingredient:* Aminoethoxyvinylglycine Hydrochloride (AVG). *Product Type:* Plant Growth Regulator (PGR). *Proposed Use:* Blueberries at flowering. *Contact:* BPPD.

9. *EPA Registration Number:* 73049–58. *Docket ID Number:* EPA–HQ–OPP–2016–0659. *Applicant:* Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. *Active Ingredient:* Aminoethoxyvinylglycine Hydrochloride (AVG). *Product Type:* Plant Growth Regulator (PGR). *Proposed Use:* Muskmelon seed production and olive trees at flowering. *Contact:* BPPD.

10. *EPA Registration Numbers:* 80289–1, 80289–7, 80289–8, 80289–18, 80289–20, and 80289–21. *Docket ID Number:* EPA–HQ–OPP–2016–0573. *Applicant:* Isagro S.p.A. d/b/a Isagro USA, Inc., 430 Davis Dr., Suite 240, Morrisville, NC 27560. *Active Ingredient:* Tetraconazole. *Product Type:* Fungicide. *Proposed Use:* Dried Shelled Pea and Bean (except Soybean) (Crop Subgroup 6C), Barley, Rapeseed (Crop Subgroup 20A), and Wheat. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 2, 2016.

Rob McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–30178 Filed 12–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0597; FRL–9954–68]

Chemical Data Reporting; Requirements for Inorganic Byproduct Chemical Substances; Notice of Intent To Negotiate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Establish Negotiated Rulemaking Committee and Negotiate a Proposed Rule.

SUMMARY: EPA is giving notice that it intends to establish a Negotiated Rulemaking Committee under the Federal Advisory Committee Act

(FACA) and the Negotiated Rulemaking Act (NRA). The objective of the Negotiated Rulemaking Committee will be to negotiate a proposed rule that would limit chemical data reporting requirements under section 8(a) of the Toxic Substances Control Act (TSCA), as amended by the Frank. R. Lautenberg Chemical Safety for the 21st Century Act, for manufacturers of any inorganic byproduct chemical substances, when such byproduct chemical substances are subsequently recycled, reused, or reprocessed. The purpose of the Negotiated Rulemaking Committee will be to conduct discussions in a good faith attempt to reach consensus on proposed regulatory language. This negotiation process is required by section 8(a)(6) of TSCA. The Negotiated Rulemaking Committee will consist of representatives of parties with a definable stake in the outcome of the proposed requirements.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0597, 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:* Susan Sharkey, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8789; email address: *Sharkey.susan@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.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including manufacture as a byproduct chemical substance) or import chemical substances listed on the TSCA Inventory. The following list of North American Industrial Classification System (NAICS) codes are not intended to be exhaustive, but rather provides a guide to help readers determine whether this action may apply to them:

- Chemical manufacturers and importers (NAICS codes 325 and 324110; *e.g.,* chemical manufacturing and processing and petroleum refineries).
- Chemical users and processors who may manufacture a byproduct chemical substance (NAICS codes 22, 322, 331, and 3344; *e.g.,* utilities, paper manufacturing, primary metal manufacturing, and semiconductor and other electronic component manufacturing).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information 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?

As required by the Negotiated Rulemaking Act of 1996 (NRA), EPA is giving notice that the Agency intends to establish a Negotiated Rulemaking Committee. The objective of this Negotiated Rulemaking Committee will be to develop a proposed rule providing for limiting chemical data reporting requirements, under TSCA section 8(a), for manufacturers of any inorganic byproduct chemical substances, when such byproduct chemical substances are subsequently recycled, reused, or reprocessed. This negotiation process, which includes the establishment of a federal advisory committee, is required by section 8(a)(6) of the Toxic Substances Control Act (TSCA), as amended by the Frank. R. Lautenberg Chemical Safety for the 21st Century Act (''Lautenberg Act'').

B. What is the Agency's authority for this action?

This notice announcing EPA's intent to establish a Negotiated Rulemaking Committee to negotiate a proposed regulation was developed under the authority of sections 563 and 564 of the Negotiated Rulemaking Act (NRA) (5 U.S.C. 561, Pub. L. 104–320). This Negotiated Rulemaking Committee will be a statutory committee under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, section 9(a)(1)). Any proposed regulation resulting from the negotiation process would be developed under the authority of TSCA section 8 (15 U.S.C. 2607), as amended by the Lautenberg Act (Pub. L. 114–182).

III. Negotiated Rulemaking

A. Why is the Agency pursuing a negotiated rulemaking?

In the Lautenberg Act, Congress mandated that EPA undertake a negotiation process, pursuant to the NRA, aimed at developing a rule to limit TSCA section 8(a) chemical data reporting requirements for manufacturers of any inorganic byproduct chemical substances, when such byproduct chemical substances are subsequently recycled, reused, or reprocessed.

EPA sees potential benefits from undertaking this negotiated rulemaking process. A regulatory negotiation process will allow EPA to engage directly with informed, interested, and affected parties, all of whom are working together to resolve their differences. Because a negotiating committee includes representatives from the major stakeholder groups affected by or interested in the rule, the number of public comments on any proposed rule may be reduced and those comments that are received may be more moderate. EPA anticipates that few substantive changes would be

needed to any proposed rule resulting from the negotiated rulemaking process. Finally, EPA recognizes an observation of the Administrative Conference of the United States: ''Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.'' ACUS Recommendation 82–4.

B. What is the concept of negotiated rulemaking?

Negotiated rulemaking is a process in which a proposed rule is developed by a committee composed of representatives of all those interests that will be significantly affected by the rule. Decisions are made by consensus, which the NRA defines as the unanimous concurrence among interests represented on a Negotiated Rulemaking Committee, unless the Negotiated Rulemaking Committee itself unanimously agrees to use a different definition. To start the process, the Agency identifies all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a notice in the **Federal Register**, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the Agency establishes a committee representing these various interests to negotiate a consensus on the terms of a proposed rule. Representation on the Negotiated Rulemaking Committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed for this purpose. The Agency is a member of the Negotiated Rulemaking Committee representing the Federal government's own set of interests. The Negotiated Rulemaking Committee is facilitated by a trained mediator, who facilitates the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

If a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the Agency, consistent with its legal obligations, would use such consensus as the basis of a proposed rule, to be published in the **Federal Register**. This provides the required public notice and allows for a public comment period. All participants and interested parties would retain their rights to comment and to seek judicial review. EPA anticipates, however, that any preproposal consensus agreed upon by this Negotiated Rulemaking Committee would effectively address all major issues prior to publication of a proposed rulemaking.

C. What is the Agency commitment?

In initiating this regulatory negotiation process, EPA is making a commitment to provide adequate resources to ensure timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials, and personnel of the Agency who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. EPA will provide administrative support for the process and will take steps to ensure that the Negotiated Rulemaking Committee has the dedicated resources it requires to complete its work in a timely fashion. These include the provision or procurement of such support services as: Properly equipped space adequate for public meetings and caucuses; logistical support; distribution of background information; the service of a facilitator; and such additional research and other technical assistance as may be necessary. If there is consensus within the Negotiated Rulemaking Committee, EPA will use the consensus to the maximum extent possible, consistent with the legal obligations of the Agency, as the basis for a rule proposed by the Agency for public notice and comment. The Agency is committed to working in good faith to seek consensus on a proposal that is consistent with the legal mandate of TSCA.

D. What is the negotiating consensus?

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able to control the process. Again, the NRA defines consensus as the unanimous concurrence among interests represented on a Negotiated Rulemaking Committee, unless the Negotiated Rulemaking Committee itself unanimously agrees to use a different definition. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all potential parties, including EPA, to identify their interests in the rule and so to be able to reevaluate previously stated positions on issues involved in this rulemaking effort.

IV. Chemical Data Reporting for Inorganic Byproduct Chemical Substances

A. Chemical Data Reporting (CDR) Framework

Under TSCA, EPA regulates the manufacture, processing, distribution, use, and disposal of chemical substances in the United States. The TSCA Inventory of Chemical Substances (TSCA Inventory) lists the chemical substances which are manufactured or processed in the United States (also called ''existing chemical substances''). Chemical substances not on the TSCA Inventory are known as ''new chemical substances'' and are required to be reviewed through EPA's new chemical program (under TSCA section 5) prior to the commencement of manufacture or processing. There are over 85,000 chemical substances listed on the TSCA Inventory.

In 1986, EPA created the Inventory Update Reporting (IUR) regulation under TSCA section 8 to collect, every four years, limited information on the manufacture (which includes import) of organic chemical substances listed on the TSCA Inventory, thereby providing more up-to-date production volume information on the chemical substances in U.S. commerce. In 2005, EPA amended the IUR to require the reporting of information on inorganic chemical substances and to collect additional manufacturing, processing, and use information. EPA has since made additional changes to the reporting requirements, and in 2011 changed the name of the reporting rule to Chemical Data Reporting. CDR regulations are currently codified at 40 CFR part 711. EPA believes CDR is the only current reporting obligation under TSCA section 8(a) that is likely to affect the manufacturers of inorganic byproduct chemical substances. Information collected under CDR is used to support Agency programs, providing exposure-related data for chemical substances subject to TSCA in U.S. commerce. This information is also made publicly available, to the extent possible while continuing to protect submitted information claimed as confidential business information.

Manufacturers of inorganic chemical substances first reported under the IUR in 2006. They also reported under the CDR in 2012 and 2016. Specific reporting requirements for these manufacturers were phased in, to allow for the industry to better understand the reporting requirements and for EPA to

gain a better understanding of the industry. In recent years, the regulatory requirement to report byproduct chemical substances (and the availability of exemptions from that requirement) has been a frequent topic of discussion.

B. Inorganic Byproduct Chemical Substances Under CDR

A byproduct chemical substance is a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance or mixture. Such byproduct chemical substances may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage. Because byproduct chemical substances are manufactured for a commercial purpose, such manufacturing is reportable under CDR unless covered by a specific reporting exemption. CDR contains a specific reporting exemption for the manufacture of byproduct chemical substances, limited to cases where those byproduct chemical substances are not *used* for any commercial purposes (or are only used for certain limited commercial purposes) after they are manufactured. 40 CFR 711.10(c). Inorganic byproduct chemical substances are often recycled. The recycling of a byproduct chemical substance may qualify as a commercial purpose beyond the limited commercial purposes encompassed by 40 CFR 711.10(c). If so, then the CDR exemption for the manufacturer of a byproduct chemical substance is unavailable.

Beginning in 2006, EPA became aware of a variety of questions raised by the manufacturers of inorganic byproduct chemical substances about their obligations to report their manufacture of those byproduct chemical substances. EPA has since provided detailed guidance to address a variety of questions that have been raised. See 75 FR 49675–6 (2010); 76 FR 50832–3, 50849–50851 (2011). In 2011, EPA also stated that it would examine CDR information related to byproduct chemical substances to identify whether there are segments of byproduct chemical substance manufacturing for which EPA can determine that there is no need for the CDR information to continue to be collected, either for 2016 or for future reporting cycles. 76 FR 50832–3 (2011). EPA did not amend the CDR requirements for the 2016 reporting cycle. Documents providing information to assist inorganic byproduct chemical substance manufacturers with reporting under CDR requirements include: Instructions for the 2016 TSCA CDR (Ref. 1); CDR Byproduct and Recycling Scenarios (Ref. 2); TSCA CDR Fact Sheet for the Printed Circuit Board Industry (Ref. 3); and TSCA CDR Fact Sheet for Reporting Manufactured Chemical Substances from Metal Mining and Related Activities (Ref. 4).

On June 22, 2016, TSCA was amended by the Lautenberg Act. TSCA now includes a requirement that EPA enter into a negotiated rulemaking, pursuant to the NRA, to develop and publish a proposed rule to limit the reporting requirements under TSCA section 8(a), for manufacturers of any inorganic byproduct chemical substances, when such byproduct chemical substances, whether by the byproduct chemical substance manufacturer or by any other person, are subsequently recycled, reused, or reprocessed. The objective of the negotiated rulemaking process is to develop and publish a proposed rule by June 22, 2019. In the event a proposed rule is developed through the negotiated rulemaking process, a final rule ''resulting from such negotiated rulemaking'' must be issued by December 22, 2019. 15 U.S.C. 2607(a)(6).

EPA construes its obligation to propose and finalize a rule under TSCA section 8(a)(6) as being contingent on the Negotiated Rulemaking Committee reaching a consensus. EPA's interpretation is based on several factors. First, TSCA section 8(a)(6)(A) does not give any direction on how CDR reporting requirements for the specified byproduct chemical substance manufacturers should be limited, other than directing that the particular limitations should be negotiated. Second, EPA's obligation to finalize a rule under TSCA section 8(a)(6)(B) presupposes that such rule would be one ''resulting from such negotiated rulemaking.'' While EPA would have authority to issue an amendment to the CDR even if negotiation failed to achieve a consensus, such a rule would not be a rule *resulting from* the negotiated rulemaking. Accordingly, TSCA section 8(a)(6)(B) presupposes that the negotiated rulemaking process reached a consensus in directing EPA to issue a final rule. If the obligation to issue a final rule is so contingent, then it stands to reason that the prior obligation to issue a proposal is similarly contingent. Third, the time allotted for issuing a final rule (*i.e.,* six months) is relatively short, consistent with a presupposition that the proposal in question would be the product of a successful negotiation. As noted in Unit III., the process of responding to comment on a proposal would likely be simplified if that proposal is itself the result of a previously negotiated consensus. For the reasons described above, if consensus cannot be reached, and there is no agreement upon which to base a proposal, then there is no further statutory obligation to issue a proposal or a final rule.

V. Proposed Negotiating Procedures

A. Interests Involved

Section 562 of the NRA defines the term ''interest'' as one of ''multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' We anticipate that the following key interests are likely to be significantly affected by the rule to be addressed by the Negotiated Rulemaking Committee while negotiating how to limit CDR requirements for manufacturers of any inorganic byproduct chemical substances, when such byproduct chemical substances are subsequently recycled, reused, or reprocessed:

- Inorganic chemical manufacturers and processors, including metal mining and related activities;
- Recyclers, including scrap recyclers;
- Industry advocacy groups;
- Environmental advocacy groups;
- Federal, State, or Tribal governments; and
- Employee advocacy groups, such as labor unions.

B. Negotiated Rulemaking Committee Formation

The Negotiated Rulemaking Committee will be formed and operated in full compliance with the requirements of FACA in a manner consistent with the requirements of the NRA.

C. Negotiated Rulemaking Committee Membership

The Agency intends to conduct the negotiated rulemaking proceedings with particular attention to ensuring full and adequate representation of those interests that may be significantly affected by a rule providing for limiting CDR requirements for inorganic byproduct chemical substances. We have listed those interests likely to be significantly affected by a rule in Unit V.A., and the following list identifies the parties that the Agency has initially identified as representing interests likely to be significantly affected by a rule:

- Aluminum Association
- American Chemistry Council
- American Coal Ash Association

- Environmental Defense Fund
- Institute of Scrap Recycling Industries
- IPC—Association Connecting Electronics Industries
- North American Metals Council
- National Mining Association
- U.S. Environmental Protection Agency
- Utility Solid Waste Activities Group

The listed parties have been preliminarily identified by EPA as being either a potential member of the Negotiated Rulemaking Committee, or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests listed in Unit V.A. This list is not presented as a complete or exclusive list from which Negotiated Rulemaking Committee members will be selected, nor does inclusion on the list mean that a party on the list has agreed to participate as a member of the Negotiated Rulemaking Committee or as a member of a coalition. This list merely indicates those parties that represent interests that EPA has tentatively identified as being significantly affected by a rule providing for limiting CDR requirements for inorganic byproduct chemical substances.

EPA anticipates that the Negotiated Rulemaking Committee will be comprised of approximately 10–25 members representing significantly affected interests. The EPA Administrator will select members carefully to ensure that there is a balanced representation of such interests on the Negotiated Rulemaking Committee. EPA anticipates that the Negotiated Rulemaking Committee will contain representatives from industry, environmental groups, and state, local, and tribal governments.

One purpose of this document is to determine whether the negotiated rulemaking will significantly affect interests that are not listed in Unit V.A., as well as whether the list of parties the Agency has listed identifies accurately and comprehensively a group of stakeholders representing the significantly affected interests listed in Unit V.A. EPA requests comment and suggestions on the list of significantly affected interests, as well as the list of proposed representatives of those interests. EPA recognizes that any regulatory actions it takes under this program may at times affect various segments of society in different ways, and that this may in some cases produce unique interests in a rule based on demographic factors. Particular attention will be given by the Agency to ensure that any unique interests that have been identified in this regard, and that may be significantly affected by any rule resulting from the negotiation, are represented.

This document affords potential participants the opportunity to request representation in the negotiations. Request such representation by submitting a comment as described under **ADDRESSES** in this notice.

Section 565(b) of the NRA requires the Agency to limit membership on a Negotiated Rulemaking Committee to 25 members, unless the Agency determines that more members are necessary in order for the Negotiated Rulemaking Committee to function or to achieve balanced membership. The Agency believes that the negotiating group should not exceed 25 members, which would make it difficult to conduct effective negotiations. EPA is aware that there are many more than 25 potential participants to consider for the Negotiated Rulemaking Committee. The Agency does not believe, nor does the NRA contemplate, that each significantly affected interest must participate directly in the negotiations; however, each significantly affected interest can be adequately represented. To have a successful negotiation, it is important for significantly affected interests to identify and form coalitions that adequately represent those interests. These coalitions, to provide adequate representation, must agree to support, both financially and technically, a member to the Negotiated Rulemaking Committee whom they will choose to represent their interest. The Agency believes it is very important to recognize that interested parties who are not selected to membership on the Negotiated Rulemaking Committee can still make valuable contributions to this negotiated rulemaking effort in any of several ways:

- The party could request to be placed on the Negotiated Rulemaking Committee mailing list, submitting written comments, as appropriate;
- The party could attend the Negotiated Rulemaking Committee meetings, which are open to the public, caucus with his or her interest's member on the Negotiated Rulemaking Committee, or even address the Negotiated Rulemaking Committee (usually allowed at the end of an issue's discussion or the end of the session, as time permits); or
- The party could assist a workgroup that might be established by the Negotiated Rulemaking Committee.

An advisory committee may convene informal workgroups to assist the Negotiated Rulemaking Committee in ''staffing'' various discrete and technical matters (*e.g.,* researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) so as to facilitate Negotiated Rulemaking Committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the affordability and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the Negotiated Rulemaking Committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied. Because it recognizes the importance of this staffing work for the Negotiated Rulemaking Committee, EPA will provide appropriate administrative and technical expertise for such workgroups.

EPA requests comment regarding particular appointments to membership on the Negotiated Rulemaking Committee. Members can be individuals or organizations. If the effort is to be successful, participants should be able to fully and adequately represent the viewpoints of their respective interests. Those who wish to be appointed as members of the Negotiated Rulemaking Committee should submit a request to EPA by submitting a comment as described under **ADDRESSES** in this notice. The list of potential Negotiated Rulemaking Committee members provided earlier in this document includes those who have been initially identified by EPA as being either a potential member of the Negotiated Rulemaking Committee, or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests on the Negotiated Rulemaking Committee.

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.

D. Good Faith Negotiation

Negotiated Rulemaking Committee members should be willing to negotiate in good faith and have the authority, from her or his constituency, to do so. The first step is to ensure that each member has good communications with her or his constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its

representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion.

Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members. The convening meeting of the Negotiated Rulemaking Committee is expected to be held in March 2017, and the work of the Negotiated Rulemaking Committee is expected to conclude approximately in September 2017.

Other qualities that can be very helpful are negotiating experience and skills, as well as sufficient technical knowledge to participate in substantive negotiations. Certain concepts are central to negotiating in good faith. One is the willingness to bring key issues to the bargaining table in an attempt to reach a consensus, instead of keeping issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from the type of positions usually taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the Negotiated Rulemaking Committee.

E. Facilitator

The facilitator will not be involved with the substantive development of any proposed rule. Rather, the facilitator's role generally includes facilitating the meetings of the Negotiated Rulemaking Committee in an impartial manner and impartially assisting the members of the Negotiated Rulemaking Committee in conducting discussions and negotiations.

F. EPA Representative

The EPA representative will be a full and active participant in the consensus building negotiations. The Agency's representative will meet regularly with various senior Agency officials, briefing them on the negotiations and receiving their suggestions and advice, in order to effectively represent the Agency's views regarding the issues before the Negotiated Rulemaking Committee. EPA's representative also will ensure that the entire spectrum of federal governmental interests affected by the rulemaking, including the Office of Management and Budget (OMB) and other Departments and agencies, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion.

VI. Comments Requested

EPA requests comment on the extent to which the issues, interests, Negotiated Rulemaking Committee representatives, and procedures described in this document are adequate and appropriate.

VII. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA (2016). Instructions for Reporting 2016 TSCA CDR, *https://www.epa.gov/sites/production/files/2016-05/documents/instructions_for_reporting_2016_tsca_cdr_13may2016.pdf.* Retrieved October 21, 2016.
2. EPA (2012). CDR Byproduct and Recycling Scenarios, *https://www.epa.gov/sites/production/files/documents/2012_cdr_byproducts_scenaros_0.pdf.* Retrieved October 21, 2016.
3. EPA (2016). TSCA CDR Fact Sheet: Byproducts Reporting for the Printed Circuit Board Industry, *https://www.epa.gov/sites/production/files/2016-02/documents/final_cdr_fact_sheet_printed_circuit_board_2_22_16.pdf.* Retrieved October 21, 2016.
4. EPA (2016). TSCA CDR Fact Sheet: Reporting Manufactured Chemical Substances from Metal Mining and Related Activities, *https://www.epa.gov/sites/production/files/2016-05/documents/cdr_fact_sheet_metal_mining_5may2016.pdf.* Retrieved October 21, 2016.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 7, 2016.

Jim Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2016–30177 Filed 12–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[9956–91–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Oregon's request to revise/modify its EPA Administered Permit Programs: The National Pollutant Discharge Elimination System EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On November 3, 2016, the Oregon Department of Environmental Quality (OR DEQ) submitted an application titled ''National Pollutant Discharge Elimination System'' for revision/modification to its EPA-approved program under title 40 CFR to allow new electronic reporting. EPA reviewed OR DEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for

approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 122, 125, 403, and 503 is being published in the **Federal Register**:

Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;

Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution

Part 501—State Sludge Management Program Regulations

OR DEQ was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Matthew Leopard,

Director, Office of Information Management.

[FR Doc. 2016–30172 Filed 12–14–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0667 and 3060–1104]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 17, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0667.

Title: Section 76.630, Compatibility with Consumer Electronics Equipment; Section 76.1621, Equipment Compatibility Offer; Section 76.1622, Consumer Education of Equipment Compatibility.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 8,250 respondents; 66,501 responses.

Estimated Time per Response: .017 hours-3 hours.

Frequency of Response: Recordkeeping and third party disclosure requirements; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 4(i) and Section 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 17,353 hours.

Total Annual Cost: $1,355.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.630(a) states a cable system operator shall not scramble or otherwise encrypt signals carried on the basic service tier. This requirement is subject to certain exemptions explained below. Requests for waivers of this prohibition, which are allowed under 47 CFR 76.630(a)(2), must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business). Cable operators may file comments in reply no

later than 7 days from the date subscriber comments must be filed.

The information collection requirements in 47 CFR 76.1621 states a cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year (*i.e.,* in subscriber billings or pre-printed information on the bill).

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

Information Collection Requirements

In October 2012, the Commission loosened its prohibition on encryption of the basic service tier. This rule change allows all-digital cable operators to encrypt, subject to certain consumer protection measures. 77 FR 67290 (Nov. 9, 2012); 47 CFR 76.630(a)(1). Encryption of all-digital cable service will allow cable operators to activate and/or deactivate cable service remotely, thus relieving many consumers of the need to wait at home to receive a cable technician when they sign up for or cancel cable service, or expand service to an existing cable connection in their home.

In addition, encryption will reduce service theft by ensuring that only paying subscribers have decryption equipment. Encryption could reduce cable rates and reduce the theft that often degrades the quality of cable service received by paying subscribers. Encryption also will reduce the number of service calls necessary for manual installations and disconnections, which may have beneficial effects on vehicle traffic and the environment.

Because this rule change allows cable operators to encrypt the basic service tier without filing a request for waiver, we expect that the number of requests for waiver will decrease significantly.

The information collection requirements in 47 CFR 76.1622 states that Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: View a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as ''Picture-in-Picture,'' channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

OMB Control Number: 3060–1104.

Title: Section 73.682(d), DTV Transmission and Program System and

Information Protocol (''PSIP'') Standards.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not for-profit institutions.

Number of Respondents and Responses: 1,812 respondents and 1,812 respondents.

Estimated Hours per Response: 0.50 hours.

Frequency of Response: Third party disclosure requirement; weekly reporting requirement.

Total Annual Burden: 47,112 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 309 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 73.682(d) of the Commission's rules incorporates by reference the Advanced Television Systems Committee, Inc. (''ATSC'') Program System and Information Protocol (''PSIP'') standard ''A/65C.'' PSIP data is transmitted along with a TV broadcast station's digital signal and provides viewers (via their DTV receivers) with information about the station and what is being broadcast, such as program information. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers (or viewers) of digital television (''DTV'').

Therefore, the information collections requirements for ATSC PSIP standard A/65C requires broadcasters to provide detailed programming information when transmitting their broadcast signal. This standard enhances consumers' viewing experience by providing detailed information about digital channels and programs, such as how to find a program's closed captions, multiple streams and V-chip information. This standard requires broadcasters to populate the Event Information Tables (''EITs'') (or program guide) with accurate information about each event (or program) and to update the EIT if more accurate information becomes available. The previous ATSC PSIP standard A/65–B did not require broadcasters to provide such detailed programming information but only general information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–30169 Filed 12–14–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0741]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 17, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Kimberly R. Keravuori, OMB, via email *Kimberly_R_Keravuori@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0741.

Title: Technology Transitions, GN Docket No. 13–5, et al.

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,357 respondents; 573,767 responses.

Estimated Time per Response: 0.5–8 hours.

Frequency of Response: On occasion and one-time reporting requirements; recordkeeping and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 251.

Total Annual Burden: 575,840 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 251 of the Communications Act of 1934, as amended, 47 U.S.C. 251, is designed to accelerate private sector development

and deployment of telecommunications technologies and services by spurring competition. These OMB collections are designed to help implement certain provisions of section 251, and to eliminate operational barriers to competition in the telecommunications services market. Specifically, these OMB collections will be used to implement (1) local exchange carriers' (''LECs'') obligations to provide their competitors with dialing parity and non-discriminatory access to certain services and functionalities; (2) incumbent local exchange carriers' (''ILECs'') duty to make network information disclosures; and (3) numbering administration. The Commission estimates that the total annual burden of the entire collection, as revised, is 575,840 hours. This revision relates to a change in one of many components of the currently approved collection—specifically, certain reporting, recordkeeping and/or third party disclosure requirements under section 251(c)(5). In August 2015, the Commission adopted new rules concerning certain information collection requirements implemented under section 251(c)(5) of the Act, pertaining to network change disclosures. The changes to those rules applied specifically to a certain subset of network change disclosures, namely notices of planned copper retirements. The changes were designed to provide interconnecting entities adequate time to prepare their networks for the planned copper retirements and to ensure that consumers are able to make informed choices. The Commission estimated that the 2015 revisions did not result in any additional burden hours or outlays of funds for hiring outside contractors or procuring equipment. In July 2016, the Commission revised section 51.329(c) of its network change disclosure rules to make available to filers new titles applicable to copper retirement notices. The Commission estimates that the revision does not result in any additional burden hours or outlays of funds for hiring outside contractors or procuring.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–30170 Filed 12–14–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, December 15, 2016

December 8, 2016.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 15, 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	CONSUMER & GOVERNMENTAL AFFAIRS.	TITLE: Transition from TTY to Real-Time Text Technology (CG Docket No. 16–145); Petition for Rulemaking to Update the Commission's Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology (GN Docket No. 15–178). SUMMARY: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking to help achieve the transition from TTY technology to a reliable and interoperable means of providing real-time text communication over wireless Internet protocol-enabled networks and services.
2	PUBLIC SAFETY & HOMELAND SECURITY.	TITLE: Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System (PS Docket No. 15–94). SUMMARY: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking to enhance the Emergency Alert System (EAS) as a tool for community emergency preparedness. The Report and Order improves alerting organization at the state and local levels, builds stronger community-based alerting exercise programs, and protects the EAS against accidental misuse and malicious intrusion. The Further Notice seeks comment on proposals to leverage technological advances to improve alerting and additional measures to preserve EAS security.
3	INTERNATIONAL	TITLE: Update to Parts 2 and 25 Concerning Non-geostationary, Fixed-Satellite Service Systems and Related Matters. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking to update, clarify, and streamline the Commission's rules to facilitate the deployment of recently proposed non-geostationary-satellite orbit, fixed-satellite service satellite systems.
4	GENERAL COUNSEL	TITLE: Amendment of Part 0 of the Commission's Rules Regarding Public Information, the Inspection of Records, and Implementing the Freedom of Information Act. SUMMARY: The Commission will consider an Order that updates its Freedom of Information Act (FOIA) regulations consistent with the FOIA Improvement Act of 2016.
5	WIRELESS TELE-COMMUNICATIONS	TITLE: Maritime Communications/Land Mobile, LLC, Order on Reconsideration and Memorandum Opinion and Order. SUMMARY: The Commission will consider an Order on Reconsideration and Memorandum Opinion and Order regarding the assignment of licenses held by Maritime Communications/Land Mobile, LLC.
6	PUBLIC SAFETY & HOMELAND SECURITY.	TITLE: Improving the Resiliency of Mobile Wireless Communications Networks, (PS Docket 13–239); Reliability and Continuity of Communications Networks, Including Broadband Technologies (PS Docket No. 11–60). SUMMARY: The Commission will consider an Order that evaluates the Wireless Network Resiliency Cooperative Framework submitted by members of the wireless industry.
7	ENFORCEMENT	TITLE: Preferred Long Distance, Inc., Memorandum Opinion and Order.

Item No.	Bureau	Subject
		SUMMARY: The Commission will consider a Memorandum Opinion and Order that addresses a Petition for Reconsideration of a Forfeiture Order issued by the Commission for slamming and deceptive marketing.
*	* * * * * * *	
	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	TITLE: Action Mission Broadcasting, Inc., Application For Renewal of License For Television Station WUTR(TV), Utica, New York. SUMMARY: The Commission will consider an Order adopting a Consent Decree which resolves issues regarding potential violations of the Commission's rules and grants the license renewal application of WUTR(TV).
2	MEDIA	TITLE: Applications of Immaculate Conception Apostolic School for a Construction Permit and Covering License for Noncommercial Educational Station DKJPT(FM), Colfax, California. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning the dismissal of a Petition for Reconsideration of a Media Bureau Order dismissing the Station's License Application and cancelling its construction permit.
3	MEDIA	TITLE: Urbanmedia One, Application for New LPFM Station (WJPC–LP) at Chicago, IL. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning the dismissal of a Petition for Reconsideration of the grant of an application to construct a new low power FM station in Chicago, Illinois.
4	MEDIA	TITLE: Little Rock Hispanic Education Family Foundation *et. al.,* Applications for New LPFM Stations. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning the denial of an Informal Objection to applications for construction permits for new LPFM stations.
5	CONSUMER & GOVERNMENTAL AFFAIRS.	TITLE: Ministry of Communications of the Archdiocese of Miami, FL; Closed Captioning Petitions for Waiver; Application for Review. SUMMARY: The Commission will consider a Memorandum Opinion and Order addressing an Application for Review seeking review of the Bureau's dismissal of the Ministry's petition for exemption from the Commission's closed captioning requirements.

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* 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.*

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.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–30134 Filed 12–14–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:22 a.m. on Tuesday, December 13, 2016, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Richard Cordray (Director, Consumer Financial Protection Bureau), concurred in by Director Thomas J. Curry (Comptroller of the Currency) and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Dated: December 13, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–30318 Filed 12–13–16; 4:15 pm]

BILLING CODE 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 January 13, 2017.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Texas State Bankshares, Inc.,* Harlingen, Texas; to acquire Blanco National Holdings, Inc., and therefore indirectly acquire The Blanco National Bank, both of Blanco, Texas.

Board of Governors of the Federal Reserve System, December 12, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–30135 Filed 12–14–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reporting of Pregnancy Success Rates From Assisted Reproductive Technology (ART) Programs; Clarifications and Modifications

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) announces clarification and modification of certain definitions used for reporting of pregnancy success rates from assisted reproductive technology (ART) programs as required by the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA). These clarifications and modifications are based on inquiries and comments to CDC after the publication of the Final Notice on August 26, 2015. All comments were reviewed and carefully considered in developing the final definition to better assist ART clinics in reporting accurate data to CDC.

FOR FURTHER INFORMATION CONTACT: Jeani Chang, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, MS–74, Atlanta, Georgia 30341. Phone: (770) 488–6370. Email: *artinfo@cdc.gov.*

SUPPLEMENTARY INFORMATION: On August 26, 2015, HHS/CDC published a notice in the **Federal Register** (80 FR 51811) announcing the overall reporting requirements of the National ART Surveillance System (NASS). The notice describes who shall report to HHS/CDC; the process for reporting by each ART program; the data to be reported; and the contents of the published reports.

This notice includes clarification and modification of certain definitions used for reporting of pregnancy success rates from assisted reproductive technology (ART) programs, reporting requirements and responsibilities, and data validation.

Clarification and Modification:

Section J. Definitions

Current: Gestational carrier (sometimes referred to as a gestational surrogate)—A woman who gestates an embryo that did not develop from her oocyte, with the expectation of returning the infant to its intended parent(s). NOTE: For female same sex couples, the woman who will carry the pregnancy should be identified as the patient and a separate cycle should be reported if donor oocytes are used, even if the patient's partner is the source of the oocytes. If a gestational carrier is used, one cycle is reported for fresh embryo cycle; two cycles should be reported for frozen embryo cycle (one for the oocyte retrieval and one for the embryo transfer).

Modification: Gestational carrier—A woman who gestates an embryo that did not develop from her oocyte, with the expectation of returning the infant to its intended parent(s). If a gestational carrier is used, one cycle should be reported for fresh oocyte cycles; at least two cycles should be reported for fresh embryos created from frozen/thawed oocytes or frozen/thawed embryos (one for the oocyte retrieval and one for each cycle conducted with the intent to transfer). NOTE: For female same sex couples, if one partner will carry the pregnancy, the partner who will carry the pregnancy should be identified as the patient.

Current: Oligospermia—Semen with a low concentration of sperm. Severe oligospermia is defined by <5 million spermatozoa per mL; moderate is defined by 5–15 million spermatozoa per mL.

Modification: Oligozoospermia—Semen with a low concentration of sperm. Severe oligozoospermia is defined by <5 million spermatozoa per mL; moderate is defined by 5–15 million spermatozoa per mL.

Addition: Minimal stimulation protocol—generally includes the use of oral medications, such as clomiphene citrate, followed by a low dose of injectable gonadotropin and an hCG trigger shot or just the hCG trigger shot.

Addition: Cigarette smoking—Includes smoking of combustible tobacco products, such as cigarettes, cigars, cigarillos and little cigars; does not include electronic cigarettes.

Dated: December 12, 2016.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–30145 Filed 12–14–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0390]

Use of Electronic Informed Consent—Questions and Answers; Guidance for Institutional Review Boards, Investigators, and Sponsors; Availability

AGENCY: Food and Drug Administration and Office for Human Research Protections, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) and the Office for Human Research Protections (OHRP), Department of Health and Human Services (HHS), are announcing the availability of a guidance entitled ''Use of Electronic Informed Consent—Questions and Answers.'' The guidance is intended for institutional review boards (IRBs), investigators, and sponsors engaged in or responsible for oversight of human subject research under HHS and/or FDA regulations. The guidance provides recommendations on the use of electronic systems and processes that may employ multiple electronic media to obtain informed consent for both HHS-regulated human subject research and FDA-regulated clinical investigations of medical products, including human drug and biological products, medical devices, and combinations thereof. This guidance finalizes the draft guidance entitled ''Use of Electronic Informed Consent in Clinical Investigations—Questions and Answers'' issued in March 2015.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–0390 for ''Use of Electronic Informed Consent—Questions and Answers; Guidance for Institutional Review Boards, Investigators, and Sponsors; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

See section III of the **SUPPLEMENTARY INFORMATION** section for submitting written requests for single copies of this guidance and for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Cheryl Grandinetti, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3348, Silver Spring, MD 20993–0002, 301–796–2500; Nicole Wolanski, Office of Good Clinical Practice, Office of Special Medical Programs, Office of Medical Products and Tobacco, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5108, Silver Spring, MD 20993, 301 796–6570; Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; Irfan Khan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3459, Silver Spring, MD 20993, 1–800–638–2041 or 301–796–7100; or Irene Stith-Coleman, Office for Human Research Protections, 1101 Wootton Pkwy., suite 200, Rockville, MD 20852, 240–453–6900.

SUPPLEMENTARY INFORMATION:

I. Background

FDA and OHRP are announcing the availability of a guidance entitled ''Use of Electronic Informed Consent—Questions and Answers.'' The guidance is intended for IRBs, investigators, and sponsors responsible for oversight of human subject research under HHS and/or FDA regulations. The guidance provides recommendations on the use of electronic systems and processes that

may employ multiple electronic media to obtain informed consent for both HHS-regulated human subject research and FDA-regulated clinical investigations of medical products, including human drug and biological products, medical devices, and combinations thereof. In particular, the guidance provides recommendations on procedures that may be followed when using an electronic informed consent (eIC) to help: (1) Ensure protection of the rights, safety, and welfare of human subjects; (2) facilitate the subject's comprehension of the information presented during the eIC process; (3) ensure that appropriate documentation of consent is obtained when electronic systems and processes that may employ multiple electronic media are used to obtain informed consent; and (4) ensure the quality and integrity of eIC data included in FDA applications and made available to FDA during inspections.

In the **Federal Register** of March 9, 2015 (80 FR 12496), FDA announced the availability of a draft guidance entitled ''Use of Electronic Informed Consent in Clinical Investigations—Questions and Answers.'' FDA received a number of comments on the draft guidance. In response to these comments, this guidance provides further clarification on: (1) How to present information in the eIC to the subject; (2) how and where to conduct the eIC process; (3) how and when questions from subjects should be answered; (4) steps that may be taken to facilitate the subject's understanding; (5) how to convey additional information to the subject during the course of the research; (6) how to use electronic signatures to document eIC; (7) how to verify the identity of the subjects who will be electronically signing the informed consent; (8) how to use electronic informed consent for pediatric studies; (9) how to provide copies of the eIC to the subject; (10) steps that may be taken to ensure privacy, security, and confidentiality of the eIC information; (11) how to obtain Health Insurance Portability and Accountability Act authorizations for research electronically; (12) what eIC materials the investigator should submit to the IRB; (13) what the IRB's responsibilities are in the eIC process; (14) the eIC documentation required for FDA submission with applications; (15) steps to ensure that eIC materials are archived appropriately for FDA-regulated clinical investigations; and (16) what eIC materials or documents FDA will require during an inspection.

In addition, in the **Federal Register** of March 9, 2015 (80 FR 12497), OHRP asked for public comment on whether OHRP should adopt the positions and recommendations proposed in the draft guidance for research regulated under the HHS protection of human subjects regulations, 45 CFR part 46, and whether OHRP and FDA should issue a joint guidance on this topic. In response to these comments, the final guidance was developed in collaboration with FDA and OHRP and is issued as a joint final guidance.

To enhance human subject protection and reduce regulatory burden, OHRP and FDA have been actively working to harmonize the Agencies' regulatory requirements and guidance for human subject research. This guidance was developed as a part of these efforts. OHRP and FDA believe that it will be helpful to the regulated community to issue a joint guidance, which will clearly demonstrate the Agencies' collaborative approach to the topic of electronic informed consent.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA and OHRP on the use of electronic informed consent. It does not establish any rights for any person and is not binding on OHRP, FDA, or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 11 related to electronic records and electronic signatures have been approved under OMB control number 0910–0303; the collections of information in 21 CFR parts 50 and 56 related to protection of human subjects and to IRBs have been approved under OMB control number 0910–0755; the collections of information in 21 CFR 56.115 related to IRB recordkeeping requirements, which include requirements for records related to informed consent, have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; and the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. The collections of information related to the protection of human subjects under 45 CFR part 46 and to IRB recordkeeping under 45 CFR 46.115 have been approved under OMB control number 0990–0260.

III. Addresses for Written Requests

Submit written requests for single copies of this guidance and for electronic access to the guidance document to one of the following Centers.

Center	Address	Telephone	Other information
Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration.	10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002.	.....	
Office of Good Clinical Practice, Office of Special Medical Programs, Office of Medical Products and Tobacco, Food and Drug Administration.	10903 New Hampshire Ave., Bldg. 32, rm. 5103, Silver Spring, MD 20993–0002.	.....	
Office for Human Research Protections	1101 Wootton Pkwy., suite 200, Rockville, MD 20852.	.....	
Center for Biologics Evaluation and Research, Food and Drug Administration.	10903 New Hampshire Ave., Bldg. 71, rm. 7301, Silver Spring, MD 20993–0002.	240–7911–402	
Center for Devices and Radiological Health, Food and Drug Administration.	10903 New Hampshire Ave., Bldg. 66, rm. 4621, Silver Spring, MD 20993.	1–800–638–2041 or 301–796–7100.	Send one self-addressed adhesive label to assist that office in processing your requests.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm, http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/GuidancesInformationSheetsandNotices/ucm219433.htm, http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/ProposedRegulationsandDraftGuidances/default.htm, http://www.hhs.gov/ohrp/newsroom/rfc/index.html,* or *http://www.regulations.gov.*

Leslie Kux,

Assistant Commissioner for Policy, Food and Drug Administration.

Karen B. DeSalvo,

Acting Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2016–30146 Filed 12–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0795]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 17, 2017.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0375. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act—OMB Control Number 0910–0375—Extension

Section 210 of the Food and Drug Administration Modernization Act (FDAMA) established section 523 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket notifications (510(k)s). Participation in this third-party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's 510(k) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation, to FDA. Third-party reviewers should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years.

This information collection will allow FDA to continue to implement the accredited person review program established by FDAMA and improve the efficiency of 510(k) review for low- to moderate-risk devices. Respondents to this information collection are businesses or other for-profit organizations.

FDA receives an average of one application for accreditation for third-party review per year. According to FDA's data, the number of 510(k)s submitted for third-party review is approximately 260 annually, which is 26 annual reviews per each of the 10 accredited reviewers. Third-party reviewers are required to keep records of their review of each submission.

In the **Federal Register** of July 8, 2016 (81 FR 44627), FDA published a 60-day notice requesting public comment on the proposed collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests for accreditation	1	1	1	24	24
510(k) reviews conducted by accredited third parties	10	26	260	40	10,400
Total					10,424

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
510(k) reviews	10	26	260	10	2,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–30113 Filed 12–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: February 23, 2017.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

Dated: December 8, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–30075 Filed 12–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: January 24, 2017.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report from the Institute Director, other Institute Staff and scientific presentation.

Place: The William F. Bolger Center, Franklin Building, Classroom 15/16, 9600 Newbridge Drive, Potomac, MD 20854.

Closed: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The William F. Bolger Center, Franklin Building, Classroom 15/16, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: David T. George, Ph.D., Acting Associate Director, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: December 8, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–30074 Filed 12–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Applications in Biobehavioral Regulation, Learning, and Ethology.

Date: December 21, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Andrea B Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 8, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–30072 Filed 12–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 6, 2017.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 3049, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Ste. 4076, MSC 9306, Bethesda, MD 20892–9306, 301–402–0838, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 8, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–30073 Filed 12–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of March 2, 2016.

DATES: *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on March 2, 2016. The next triennial inspection date will be scheduled for March 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 804 East North St., Cushing, OK 74023, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurements.
17	Maritime Measurements.

Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–10	D323	Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method).
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–46	D5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.
N/A	D4007	Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: December 7, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–30121 Filed 12–14–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Sea, LTD., as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of SEA, Ltd. as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SEA, Ltd. has been accredited to test certain wax and candle products under Chapter 34 of the Harmonized Tariff Schedule of the United States (HTSUS) for customs purposes for the next three years as of September 15, 2016.

DATES: *Effective Dates:* The accreditation of SEA, Ltd., as a commercial laboratory became effective on September 15, 2016. The next triennial inspection date will be scheduled for September 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12, that SEA, Ltd., 7001 Buffalo Parkway, Columbus, OH 43229, has been accredited to test certain wax and candle products under Chapter 34 of the Harmonized Tariff Schedule of the United States (HTSUS) for customs purposes, in accordance with the provisions of 19 CFR 151.12. SEA, Ltd. is accredited for the following laboratory analysis procedures and methods for certain wax and candle products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL):

CBPL No.	Title
34–07	Quantitation of Paraffin in Beeswax and Other Waxes by High Temperature Capillary Gas Chromatography.
34–14	Qualitative and Quantitative Analysis of Petroleum Wax in Candles by Capillary Gas Chromatography.
34–15	Qualitative Analysis of Wax and Gel Candles by Infrared Spectroscopy.
34–16	Quantitative Analysis of Petroleum Wax in Candles by Solid Phase Extraction Chromatography.

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: December 5, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–30119 Filed 12–14–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc. as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of June 9, 2016.

DATES: *Effective Dates:* The approval of Intertek USA, Inc. as commercial gauger became effective on June 9, 2016. The next triennial inspection date will be scheduled for June 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 91–110 Hanua Street #204, Kapolei, HI 96707, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
14	Natural Gas Fluids Measurement.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: December 7, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–30122 Filed 12–14–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services, LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 4, 2016.

DATES: *Effective Dates:* The accreditation and approval of AmSpec Services, LLC, as commercial gauger and laboratory became effective on August 4, 2016. The next triennial inspection date will be scheduled for August 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 36 Mileed Way, Avenel, NJ 07001, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. AmSpec Services, LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime Measurement.

AmSpec Services, LLC is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D2622	Standard Test Method for Sulfur in Petroleum Products.
27–20	D4057	Standard Practice for Manual Sampling of Petroleum and Petroleum Products.
27–21	D4177	Standard Practice for the Automatic Sampling of Petroleum and Petroleum Products.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: December 7, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–30120 Filed 12–14–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and petroleum products for customs purposes for the next three years as of January 26, 2016.

DATES: *Effective Dates:* The approval of Intertek USA, Inc., as commercial gauger became effective on January 26, 2016. The next triennial inspection date will be scheduled for January 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 214 N Gulf Blvd., Freeport, TX 77541, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek

USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: December 7, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–30123 Filed 12–14–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2016–0077]

Supplemental Programmatic Environmental Assessment (SPEA) for the Proposed Establishment and Operations of the Office of Biometric Identity Management and the Homeland Advanced Biometric Technology (HART)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice of availability of public review of a Supplemental Programmatic Environmental Assessment.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Biometric Identity Management (OBIM) has completed a Draft Supplemental Programmatic Environmental Assessment (SPEA) to assess the impacts resulting from the replacement of the existing Automated Biometric Identification System (IDENT) in order to meet obligations pertaining to expanded biometric service obligations.

IDENT was developed in the 1990s by the Immigration and Naturalization Service as a pilot project. As DHS demands for biometric identity services grew and evolved, IDENT expanded both its customer base and services provided to those customers by retrofitting functionalities to its original pilot project foundation to meet urgent mission needs. The system has progressed from supporting one usage scenario and one stakeholder in 1994 to a multiplicity of business processes, services, and interfaces required to meet the needs of a variety of stakeholders. In 2003 the former United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program was designated as the DHS provider for biometric and associated biographic identity screening and analysis services.

The primary mission of the former US–VISIT program was to serve as a repository of collected information on the unique identity of travelers and to collect, maintain, and share information related to entry, exit, and status events of foreign nationals in order to enhance national security, facilitate legitimate trade and travel, and ensure the integrity of our immigration system, while deploying the program in accordance with existing privacy laws and policies. This mission was accomplished through the deployment of discrete capabilities through two systems: IDENT and the Arrival and Departure Information System (ADIS).

In 2013 OBIM assumed cross-cutting responsibility for DHS biometric identity services from the former US–VISIT Program. OBIM operates and maintains IDENT, and matches, stores, analyzes, and shares biometric data to provide more accurate and high assurance biometric identity information and analysis. IDENT, with its repository of biometrics and associated biographic data, is used by its customers for biometric identity verification and determination. Current IDENT customers include DHS components such as U.S. Citizenship and Immigration Services, U.S. Coast Guard, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, Transportation Security Administration, and various elements of DHS Headquarters; the Intelligence Community; other Federal agencies including the Departments of Justice, State, and Defense; State and local law enforcement; and international partners. OBIM needs HART to replace the 22-year-old legacy IDENT system to ensure continued fulfillment of evolving customer and mission needs. The redesign and development of the system will address the baseline and current gaps including capacity, increased security and privacy protections, interoperability, unsustainable costs, and performance and availability. Support of the system for additional biometric identity modalities beyond fingerprints will address customer needs for alternative modalities, provide options for non-contact biometric data collection, improve performance, and increase interoperability with customers and partners that support multiple biometric modalities.

For the Proposed Action, OBIM would develop and implement a solution to address increasing customer demand for biometric services in addition to providing technological advances, more efficient processing, and a flexible and a scalable platform to meet DHS's mid- and long-term identity needs. Several project alternatives explored in the SPEA were: (1) No Action; (2) Enhanced Baseline with Transaction Manager Replacement Alternative; (3) Data Driven Modular Alternative; and (4) Cloud Based and Managed Service. In reviewing the alternatives, OBIM's objective was to determine whether to prepare a ''Finding of No Significant Impact'' (FONSI) or an ''Environmental Impact Statement'' (EIS). With the No Action Alternative, minor indirect effects may occur with respect to noise and air quality from the slowing of services at customer locations. With Alternatives 2, 3, or 4, minor impacts are anticipated with respect to energy use. With any of these alternatives, OBIM will have an increase in capacity and scope of services which may increase energy use. However, it is also anticipated that the proposed improvements will increase efficiencies in the administration and use of OBIM services with all of the action alternatives. Therefore, energy impacts are expected to be minimal. For implementation of Alternative 4 specifically, managed service may be hosted in the existing DHS data centers or other federally approved sites. For the No Action Alternative and Alternative 4, potential changes to facilities or personnel may have some minimal effects, particularly with the potential for temporary construction. However, more specific analysis is not possible at this programmatic level of assessment, and would have to be performed with site-specific environmental analysis.

DATES: Comments are encouraged and will be accepted until thirty (30) days after the date of this notice.

This process is conducted in accordance with sec. 102 of the National Environmental Policy Act (NEPA) of 1969, as implemented by the regulations promulgated by the President's Council on Environmental Quality (CEQ; 40 CFR parts 1500–1508) and the U.S. Department of Homeland Security (DHS) NEPA implementing procedures, DHS Directive 023–01, Environmental Planning Program.

ADDRESSES: Public comments are encouraged and can be made through written communication sent through electronic mail at: *nppdenvironmental@hq.dhs.gov,* or the postal system to the NPPD Environmental and Energy Program, 245 Murray Lane, Mail Stop 0380, Room 608–D, Washington, DC 20528.

Use the following subject when writing in: Draft SPEA Proposed Establishment and Operations of OBIM and the HART. Public input submitted will be discussed and considered with respect to conclusions of this SPEA.

FOR FURTHER INFORMATION CONTACT: NPPD Environmental and Energy Program: *nppdenvironmental@hq.dhs.gov.* When inquiring about this notice, please use the following in the Subject Line: Draft SPEA Proposed Establishment and Operations of OBIM and the HART.

Comments on this Draft SPEA are also being solicited through a notice on the DHS NEPA Web site at: *https://www.dhs.gov/national-environmental-policy-act.*

Dated: December 6, 2016.

David Grauel,

HART Program Manager, Office of Biometric Identity Management, National Protection and Programs Directorate.

[FR Doc. 2016–30187 Filed 12–14–16; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0143: FXIA16710900000–178–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before January 17, 2017.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–0143.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–0143; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Viewing Comments: Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Endangered Species

Applicant: Louisiana State University, Museum of Natural Science, Baton Rouge, LA; PRT–96802B

The applicant requests a permit to import biological samples from wild specimens of the Haitian solenodon (*Solenodon paradoxus*) for the purpose of scientific research.

Applicant: Columbus Zoo and Aquarium, Powell, OH; PRT–04186C

The applicant requests a permit to import one female captive-bred snow leopard (*Uncia uncia*) from Ontario, Quebec, Canada, for the purpose of enhancement of the species through captive propagation and zoological display.

Applicant: Wesley Loo, c/o Harvard University, Cambridge, MA; PRT–05827C

The applicant requests a permit to import biological samples from wild specimens of the medium tree finch (*Camarhynchus pauper*) from Galapagos, Ecuador, for the purpose of scientific research.

Applicant: Cleveland Metroparks Zoo, Cleveland, OH; PRT–98991B

The applicant requests a permit to import one captive-born Siberian tiger (*Panthera tigris altaica*) from Simon Marsh, Yorkshire Wildlife Park, Doncaster, United Kingdom, for the purpose of enhancement of the survival of the species.

Applicant: Michael Rohweder, St. Paul, MN; PRT–86614B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Spotted pond (*Geoclemys hamiltonii*), radiated tortoise (*Astrochelys radiata*), yellow-spot river turtle (*Podocnemis unifilis*), and Aquatic box turtle (*Terrapene coahuila*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Festival Fun Parks, LLC dba Miami Seaquarium, Miami, FL; PRT–94136B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for jackass penguins (*Spheniscus demersus*) to enhance species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Bryan Harlan, Dallas, TX; PRT–12235C

Applicant: Lewis Hardbower, Richardsville, VA; PRT–11262C

Applicant: Pedro Salazar, Houston, TX; PRT–11143C

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–30149 Filed 12–14–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17XL 1109AF LLUTW01100 L12200000.AL0000]

Notice of Closure: Target Shooting Public Safety Closure on the Lake Mountains in Utah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), pursuant to its regulations, is issuing a closure order which maintains an existing closure of approximately 900 acres of public land on the Lake Mountains in Utah County, Utah. This closure is necessary to protect persons, property, the public lands and resources from the discharge or use of firearms or dangerous weapons for the purposes of recreational target shooting. This closure does not restrict other public activities or access to this portion of the Lake Mountains that is hereby closed to recreational target shooting.

DATES: This notice announces a target shooting closure order within the described area for no longer than two years from December 15, 2016. This closure will maintain an existing closure of the same area.

FOR FURTHER INFORMATION CONTACT: Matt Preston, Field Manager; Phone: (801) 977–4300; Mail: Salt Lake Field Office, 2370 South Decker Lake Boulevard, West Valley City, Utah 84119; Email: *blm_ut_sl_comments@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: This closure affects public lands on the Lake Mountains in Utah County, Utah. The legal description of the affected public lands is:

Salt Lake Meridian

T. 7 S., R. 1 E.,
Sec. 6, lot 1, NE1/4SE1/4;
Sec. 7, lot 1.
T. 7 S., R. 1 W.,
Sec. 13, lots 2, 11, 12, and portions of lots 3, 4, 9, and 10, and SE1/4SW1/4 lying easterly of the 345 KV power line *;
sec. 24, lots 1 thru 3, 10, 13, 17, 18, and those portions of lots 11 and 12, and NW1/4 lying easterly of the 345 KV power line (BLM right-of-way UTU 0115794);
sec. 26, NW1/4NE1/4, NW1/4SW1/4, and that portion of N1/2NW1/4 lying easterly of the 345 KV power line *;
* BLM right-of-way UTU 0115794.

The area described contains approximately 900 acres.

The Salt Lake Field Office hereby closes a portion of the Lake Mountains, Utah County, Utah, to all target shooting to protect public safety, property and resources. The area will be closed under the authority of 43 CFR 8364.1—Closures and Restrictions and in conformance with BLM Washington Office Instruction Memorandum 2016–128, Requirements for Processing and Approving Temporary Public Land Closure and Restriction Orders. Due to unsafe conditions and danger to the public, it is imperative for the BLM to maintain the closure on the area.

The BLM will post target shooting closure signs at main entry points to this area. A notice and map of the target shooting closure will be posted in the Salt Lake Field Office. Maps of the affected area and other documents associated with this closure are available at: Salt Lake Field Office, 2370 S. Decker Lake Blvd., West Valley City, UT 84119 and the Salt Lake Field Office, Target Shooting Program Web site located online at: *https://eplanning.blm.gov/ epl-front-office/eplanning/projectSummary.do?methodName=render DefaultProject Summary& projectId=66041.*

The Lake Mountains are a small mountain range located on the west side of Utah Lake. The city of Saratoga Springs borders the north side of the mountains and Eagle Mountain City is along the west side. State Highway 68 runs along the eastern bench of the Lake Mountains; it is a main arterial road and is used by residential, agricultural, and recreational traffic. Across Highway 68, there are residences along the lake shore. Utah Lake is a popular area for recreationists, boaters, and anglers. The Lake Mountains are comprised of a

mixed ownership pattern of lands managed by the BLM, Utah School and Institutional Trust Lands Administration (SITLA), and several private property owners. The area encompassed by the closure is primarily used by residents of Utah County and southern Salt Lake County for target shooting.

The target shooting closure is necessary to protect persons, property, and the public lands and resources in the area. An existing target shooting closure of the area will expire on December 15, 2016 (see 79 FR 74111, December 15, 2014). The Eastern Lake Mountains Target Shooting Plan Amendment (plan amendment) is currently underway and is expected to be completed by March 2017. This plan amendment process is analyzing management of target shooting in the Lake Mountains. Following the final agency decision on the plan amendment, the promulgation of supplementary rules may be necessary to implement the plan amendment.

Prior to the 2012 closure, the Lake Mountains received about 4,000 target shooters each month; on weekends, as many as 400 shooters concentrated into 5 areas, and other dispersed locations. The slopes of the Lake Mountains provide a natural backstop that is ideal for target shooting; however, some shooters chose to target practice in the relatively flat terrain on the lower slopes. Given the topography of the area and the number of people who visit it, the area subject to this Order is not conducive to safe target shooting. Target shooting in the area has resulted in nearby private residences being shot and near-misses of automobiles and people. An additional danger is the annual threat from target shooting-related wildfires adjacent to private residences, a major power line, communication towers on the ridge top, and public land resources.

The previous two-year closure proved effective in redirecting target shooting to safer locations, allowing cleanup of the area, eliminating illegal dumping and significantly reducing target shooting-related wildfires. Since the implementation of the closure in August 2012, no near-misses from errant gunfire have been reported to law enforcement.

Since the implementation of the 2012 target shooting closure, several additional actions have been taken by private landowners, other agency partners and the BLM to augment the closure. Regular patrols have been conducted by the Utah County Sheriff's Office, BLM law enforcement rangers and private property owners. Barricades have been installed to identify the closure boundary, especially along private property and in areas receiving recurring violations, such as the Little Cove area. In 2014, Utah County installed a six-mile fence along the west side of Highway 68 with gates to allow public access on a few controlled routes. Utah County also has started planning for development of a nearby managed target shooting range. In April 2014, SITLA closed approximately 1,500 acres of state lands adjacent to and near the BLM closure to recreational access. Additionally, the BLM is nearing completion of an amendment to its land use plan to develop a long-term solution for the target shooting issues in this area. With the closure and these subsequent actions, volunteers have been able to clean up the large amounts of trash and household appliances in these areas.

This closure is made under the authority of the regulations in 43 CFR 8364.1 which states: ''To protect persons, property, and public lands and resources, the authorized officer may issue an order to close or restrict use of designated public lands.'' The closure only applies to the discharge or use of firearms or dangerous weapons for the purposes of recreational target shooting and does not affect legal hunting.

Any person who violates the above restriction may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned for no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. Such violations also may be subject to the enhanced fines provided for in 18 U.S.C. 3571.

Authority: 43 CFR 8364.1.

Edwin Roberson,

State Director.

[FR Doc. 2016–30268 Filed 12–14–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–P040–2017–1711–PH–1000–241A 17X.LLAZP04000.L1711.PH0000]

Notice of Availability of the Draft Resource Management Plan Amendment/Draft Environmental Impact Statement for Recreational Target Shooting in the Sonoran Desert National Monument, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Lower Sonoran Field Office, Phoenix, Arizona, has prepared a draft resource management plan (RMP) amendment/draft environmental impact statement (EIS) for the Sonoran Desert National Monument (SDNM). By this notice the BLM is announcing the opening of the public comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the draft RMP amendment/draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the draft RMP amendment/draft EIS addressing Recreational Target Shooting in the SDNM by any of the following methods:

- *Web site: http://1.usa.gov/1ZPyFSA.*
- *Email: blm_az_sdnmtargetshooting@blm.gov.*
- *Fax:* 623–580–5580
- *Mail:* Wayne Monger, Project Manager, Lower Sonoran Field Office, 21605 North 7th Avenue, Phoenix AZ 85027

Copies of the draft RMP amendment/draft EIS addressing Recreational Target Shooting in the SDNM are available in the Lower Sonoran Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Dave Scarbrough, Monument Manager, telephone 623–580–5651 or, Wayne Monger, Project Manager, telephone 623–580–5683; address 21605 North 7th Avenue, Phoenix Arizona 85027; email *blm_az_sdnmtargetshooting@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The planning area covers nearly 496,400 surface acres of south-central Arizona and lies within Maricopa and Pinal Counties. Population centers adjacent to the planning area include metropolitan Phoenix, and the communities of Ajo, Goodyear, Buckeye, Gila Bend, Mobile, and Maricopa. The planning area

encompasses Federal- and State-administered lands as well as private lands. The BLM manages 486,400 surface acres of public lands in the planning area, as well as 461,000 acres of (sub surface) mineral estate. The State of Arizona manages 3,900 surface acres in the planning area, and the remaining 6,100 surface acres are privately owned land.

The BLM has prepared the SDNM draft RMP amendment/draft EIS to address the management of recreational target shooting within the SDNM. The draft RMP amendment/draft EIS is needed to analyze recreational target shooting within the SDNM due to a ruling by the U.S. District Court-District of Arizona. The court vacated portions of the 2012 Record of Decision, approved RMP, and final EIS pertaining to the management of recreational target shooting throughout the SDNM and remanded the decision to the BLM for reconsideration. Pursuant to the court order, the BLM must complete the plan amendment by September 30, 2017. The formal public scoping process for the draft RMP amendment/draft EIS began on January 21, 2016, with the publication of a Notice of Intent in the **Federal Register** (81 FR 3463), and ended on March 21, 2016. The BLM held three public scoping meetings in February 2016. The BLM used public scoping comments to help identify planning issues that directed the formulation of alternatives and framed the scope of analysis in the draft RMP amendment/draft EIS. The BLM also used the scoping process to introduce the public to preliminary planning criteria, which set limits on the scope of the draft RMP amendment/draft EIS. Issues identified included, priority wildlife species and habitat, special status species, vegetation resources, lands with wilderness characteristics, designated wilderness, recreation, monument objects, hazardous materials, and public safety. The draft RMP amendment/draft EIS evaluates five alternatives in detail, including the No Action Alternative (Alternative A) and four action alternatives (Alternatives B, C, D and E). All alternatives provide for a hierarchy of mitigation that includes: 1) Avoiding impacts to the maximum extent compatible with the goals of the alternative; 2) Minimizing any impacts that are not avoided; and 3) Providing a range of responses commensurate to the level of unavoidable impacts. Alternative A, the No Action Alternative, provides that recreational target shooting on the SDNM will continue to be managed in accordance with the Lower Gila South RMP of 1988, which does not include management restrictions on recreational target shooting. Under Alternative B, an area temporarily restricted from recreational target shooting, by order of the U.S. District Court, District of Arizona (approximately 10,599 acres or 2.1 percent of the SDNM) would be permanently restricted from recreational target shooting. Alternative C would make recreational target shooting available in the Desert Back Country Recreational Management Zone (RMZ) only, resulting in approximately 54,817 acres, or 11 percent of the SDNM restricted from this activity. Under Alternative D, recreational target shooting would be available only outside of designated wilderness areas managed for wilderness characteristics and the Juan Bautista de Anza National Historic Trail (NHT) RMZ resulting in approximately 320,317 acres, or 66 percent of the SDNM restricted for this activity. Alternative E, would restrict recreational target shooting from occurring across the entire SDNM. Following the public comment period, comments will be used to prepare the proposed RMP amendment and final EIS. The BLM will respond to substantive comments by making appropriate revisions to the document, or by explaining why a comment did not warrant a change.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Raymond Suazo,

State Director.

[FR Doc. 2016–30166 Filed 12–14–16; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000.L16100000.DF0000. LXSS1080000.16XL1109AF. HAG17–0045]

Notice of Public Meeting for the San Juan Islands National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of public meeting

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the San Juan Islands National Monument Advisory Committee (MAC) will meet as indicated below:

DATES: The MAC will hold a public meeting Monday, January 30th, 2017. The meeting will run from 8:00 a.m. to 3:00 p.m. The meeting will be held at the Lopez Library at 2225 Fisherman Bay Rd, Lopez Island, WA 98261. A public comment period will be available in the afternoon from noon until 1 p.m.

FOR FURTHER INFORMATION CONTACT: Marcia deChadenèdes, San Juan Islands National Monument Manager, P.O. Box 3, 37 Washburn Ave., Suite 101, Lopez Island, Washington 98261, (360) 468–3051, or *mdechade@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1 (800) 877–8339 to contact the above individual during normal business hours. This service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The twelve member San Juan Islands MAC was chartered to provide information and advice regarding the development of the San Juan Islands National Monument's RMP. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide. All advisory committee meetings are open to the public. At noon members of the public will have the opportunity to make comments to the MAC during a one hour public comment period. Persons wishing to make comments during the public comment period should register in person with the BLM by 11 a.m. on the meeting day, at the meeting location. Depending on the number of persons wishing to comment, the length of comments may be limited. The public may send written comments to the MAC at San Juan Islands National Monument, Attn. MAC, P.O. Box 3, 37 Washburn Ave., Suite 101, Lopez Island, Washington 98261. The BLM appreciates all comments.

Dennis Strange,

Spokane District Manager.

[FR Doc. 2016–30111 Filed 12–14–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–OPH–22567; PPWOVPADH0, PPMPRHS1Y.Y00000 (177)]

Proposed Information Collection; National Park Service Office of Public Health Disease Reporting and Surveillance System

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before February 13, 2017.

ADDRESSES: Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive (Mail Stop 242), Reston, VA 20192 (mail); or via email at *madonna_baucum@nps.gov.* Please include ''1024—New DRSS'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact CDR George A. Larsen, Public Health Consultant, Office of Public Health, National Park Service, P.O. Box 168, Yellowstone National Park, WY 92190; or via email at *george_larsen@nps.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Park Service (NPS) Organic Act of 1916 (Organic Act) (54 U.S.C. 100101 *et seq.*) gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. With over 400 NPS sites and hundreds of millions of visits per year, a large potential exists for exposure to disease agents within the National Park System. The NPS Office of Public Health (OPH) is an internal agency-specific public health capability, managed, funded and operated by NPS. This program is primarily staffed with commissioned corps officers on detail to the agency from the United States Public Health Service and is a national activity headquartered in Washington, DC with field staff located across the NPS system. Through disease surveillance and response, on-site evaluation/hazard analysis, consultation, policy guidance, and coordination with local, state and other federal health jurisdictions, OPH professionals assist park superintendents in protecting and promoting visitor health in the frontcountry and backcountry/wilderness. (NPS Management Policy 2006, 8.2.5.6)

The Disease Reporting and Surveillance System (DRSS) collects de-identified data on illness reports and standardizes data collection regarding illness case reports and outbreaks among NPS employees, park concessioner employees, and visitors to the park. Individual illness reports are entered into the DRSS database by NPS staff, as well as employees of park concessioners and Commercial Use Authorization (CUA) holders, utilizing a secure web-based interface application. These data provide parks, OPH, staff and managers of park concessioners (lodging, restaurants, general stores, and snack bars), and park clinic concessioners with an early warning system for potential outbreaks and inform public health interventions. By collecting and storing data from multiple sources, the system monitors health trends among NPS employees, concessioner employees, park visitors through CUA holders, and clinic visitors; detect potential clusters or outbreaks; and inform the development and implementation of disease response and control activities. The system is currently in operation in Yellowstone National Park; however, the NPS hopes to expand the system to other parks in the future.

II. Data

OMB Control Number: 1024—New.

Title: National Park Service Office of Public Health Disease Reporting and Surveillance System.

Service Form Number(s): None.

Type of Request: Existing collection in use without OMB approval.

Description of Respondents: Concessioner employees, Commercial Use Authorization Holders, visitors to units of the National Park System, and NPS employees.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Number of Annual Responses: 400.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 20 hours.

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–30131 Filed 12–14–16; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–287 (Second Review)]

Raw-In-Shell Pistachios From Iran; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on raw-in-shell pistachios from Iran would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: EFFECTIVE DATE: December 9, 2016.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office

of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 5, 2016, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review should proceed (81 FR 45306, July 13, 2016); accordingly, a full review is being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on April 5, 2017, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on April 27, 2017, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 17, 2017. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on April 25, 2017, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 14, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 8, 2017. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 8, 2017. On May 30, 2017, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 1, 2017, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 12, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–30155 Filed 12–14–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–999]

Certain Air Mattress Bed Systems and Components Thereof Commission Determination Not to Review Two Initial Determinations Terminating the Investigation Based Upon a Consent Order Stipulation and Proposed Consent Order, a Settlement Agreement, and a Withdrawal of the Complaint; Issuance of a Consent Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations (''IDs'') (Order Nos. 9 and 10) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation based upon a consent order stipulation and proposed consent order, a settlement agreement, and a withdrawal of the complaint. The Commission has also determined to issue the consent order. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 23, 2016, based on a complaint filed by Select Comfort Corporation of Minneapolis, Minnesota; and Select Comfort SC Corporation of Greenville, South Carolina (together, ''Select Comfort''). 81 FR 32344–45. The complaint alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on infringement of U.S. Patent Nos. 6,804,848 (''the '848 patent'') and 7,389,554 (''the '554 patent'') by respondents Elements of Rest Inc. of Atlanta, Georgia, and Responsive Surface Technology LLC of Atlanta, Georgia (together, ''ReST''); and American National Manufacturing Inc. of Corona, California, and Dires LLC d/b/a Personal Comfort Bed of Orlando, Florida (together, ''ANM''). *Id.* The Office of Unfair Import Investigations is not a party to the investigation. *Id.* at 32345.

On November 4, 2016, Select Comfort and ReST filed a joint motion to terminate the investigation with respect to ReST's alleged infringement of the '554 patent based on a consent order stipulation and proposed consent order. No party responded to the motion. On November 18, 2016, the ALJ issued an ID (Order No. 9) granting the motion.

Also on November 4, 2016, Select Comfort moved to terminate the investigation in its entirety. Specifically, Select Comfort moved to terminate the investigation with respect to ReST's alleged infringement of the '848 patent based on a settlement agreement, and to terminate the investigation with respect to ANM based on a withdrawal of the complaint. On November 9, 2016, ANM opposed its termination from the investigation. On November 18, 2016, the ALJ issued an ID (Order No. 10) granting the motion.

No petitions for review of either ID were received.

The Commission has determined not to review either ID, and to issue the consent order. The investigation is terminated in its entirety.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: December 9, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–30093 Filed 12–14–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; COPS Application Package

AGENCY: Community Oriented Policing Services, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The purpose of this notice is to allow for an additional 60 days for public comment February 13, 2017.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* COPS Application Package.

(3) *Agency form number: 1103–0098* U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law Enforcement Agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents is 5,000. The estimated hourly burden to the applicant is 11 hours for each respondent to review the instructions and complete the application.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 55,000 total annual burden hours associated with this collection.

If additional information is required contact:: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: December 12, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–30108 Filed 12–14–16; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[Docket No. OTJ 120]

United States Assumption of Concurrent Federal Criminal Jurisdiction; Hoopa Valley Tribe

AGENCY: Office of Tribal Justice, Department of Justice.

ACTION: Notice.

SUMMARY: The Deputy Attorney General, exercising authority delegated by the Attorney General, granted the request by the Hoopa Valley Tribe for United States Assumption of Concurrent Federal Criminal Jurisdiction. Concurrent federal criminal jurisdiction will take effect no later than November 18, 2017.

DATES: This determination took effect on November 18, 2016.

ADDRESSES: Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530, email *OTJ@usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number) or *OTJ@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Background

The Tribal Law and Order Act (TLOA) was enacted on July 29, 2010, as Title II of Public Law 111–211. The purpose of TLOA is to help the Federal Government and tribal governments better address the unique public safety challenges that confront tribal communities. Section 221(b) of the new law, now codified at 18 U.S.C. 1162(d), permits an Indian tribe with Indian country subject to State criminal jurisdiction under Public Law 280, Pub. L. 83–280, 67 Stat. 588 (1953), to request that the United States accept concurrent jurisdiction to prosecute violations of the General Crimes Act (18 U.S.C. 1152) and the Major Crimes Act (18 U.S.C. 1153) within that tribe's Indian country.

Department of Justice Regulation Implementing 18 U.S.C. 1162(d)

On December 6, 2011, the Department published final regulations that established the framework and procedures for a mandatory Public Law 280 tribe to request the assumption of concurrent Federal criminal jurisdiction within the Indian country of the tribe that is subject to Public Law 280. 76 FR 76037 (Dec. 6, 2011), codified at 28 CFR 50.25. Among other provisions, the regulations provide that, upon acceptance of a tribal request, the Office of Tribal Justice shall publish notice of the consent in the **Federal Register**.

Request by the Hoopa Valley Tribe

By a request dated January 17, 2012, the Hoopa Valley Tribe, located in the State of California, requested that the United States assume concurrent Federal jurisdiction to prosecute violations of the General Crimes Act and the Major Crimes Act within the Indian country of the tribe. This would allow the United States to assume concurrent criminal jurisdiction over offenses within the Indian country of the tribe without eliminating or affecting the State's existing criminal jurisdiction.

The Department of Justice granted the tribe's request on November 18, 2016. In deciding to grant the tribe's request, the Department followed the procedures described in the Department's final notice on Assumption of Concurrent Federal Criminal Jurisdiction in Certain Areas of Indian Country, 76 FR 76037 (Dec. 6, 2011). The Federal government's assumption of concurrent federal criminal jurisdiction within the Indian country of the Hoopa Valley Tribe will take effect no later than November 18, 2017.

Dated: December 1, 2016.

Tracy Toulou,

Director, Office of Tribal Justice.

[FR Doc. 2016–30132 Filed 12–14–16; 8:45 am]

BILLING CODE 4410–A5–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 17, 2017. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2017–038

1. *Applicant:* Robert B Dunbar, Keck Professor of Earth Sciences, Earth Systems Science, Stanford University, Stanford, CA 94305–2115.

Activity for Which Permit Is Requested

Waste Management. The applicant proposes to conduct waste management activities associated with the operation of an unmanned aircraft system (UAS) in the Antarctic Peninsula region. The applicant is seeking this waste management permit in the unlikely even that the aircraft is lost and deemed unrecoverable during the conduct of the science missions. The applicant proposes to conduct a small number of aerial camera missions with a small UAS/quadcopter (DJI Phantom 4) to collect imagery along the fronts of floating ice tongues and tidewater glaciers. The pilot/operator has experience conducting similar UAS operations in cold and polar regions. Strict maintenance protocols will be adhered to and flight planning/mission will take place. The UAS will be launched from small inflatable watercraft, *e.g.* Zodiacs, either from the ''floor'' of the craft or using a handheld take-off method. Flights will last a maximum of 28 minutes and will be planned to maintain a 25% battery reserve upon landing. Flights will not be conducted over or near Antarctic Specially Protected Areas or Historic Sites and Monuments. If flights are planned for areas in the vicinity of scientific stations, the applicant will seek permission from station managers. There will be no flights over or near wildlife colonies, marine mammals at sea, or concentrations of flying birds. Biosecurity measures will be followed. The activities will be conducted during a cruise with Zegrahm Expeditions.

Location

Antarctic Peninsula region

Dates

January 15–30, 2017

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–30112 Filed 12–14–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee Meeting Notice

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Astronomy and Astrophysics Advisory Committee (#13883) (*TELECON*).

Date and Time: February 24, 2017; 12:00 p.m.–4:00 p.m. EDT Teleconference.

Place: National Science Foundation, Room 1005, Stafford I, 4201 Wilson Blvd., Arlington, VA 22230 (*TELECONFERENCE*).

Type of Meeting: Open. Attendance information for the meeting will be forthcoming on the Web site: *http://www.nsf.gov/mps/ast/aaac.jsp.*

Contact Person: Dr. James Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–7165.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To provide updates on agency activities and to discuss the Committee's draft annual report due 15 March 2017.

Dated: December 12, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–30100 Filed 12–14–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on Audit and Oversight, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: December 21, 2016 from 10:00–11:00 a.m. EST.

SUBJECT MATTER: (1) Committee Chair's opening remarks; (2) Discussion of the audit resolution process at NSF.

STATUS: Closed.

This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp.* Point of contact for this meeting is: Ann Bushmiller, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2016–30355 Filed 12–13–16; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00027 and 052–00028; NRC–2008–0441]

South Carolina Electric & Gas Company and South Carolina Public Service Authority; Virgil C. Summer Nuclear Station, Units 2 and 3; Passive Core Cooling System Condensate Return

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and exemption to Combined Licenses (NPF–93 and NPF–94), issued to South Carolina Electric & Gas Company (SCE&G) and South Carolina Public Service Authority (Santee Cooper) (the licensee); for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, located in Fairfield County, South Carolina.

DATES: Submit comments by January 17, 2017. Requests for a hearing or petition for leave to intervene must be filed by February 13, 2017.

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

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For

technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ruth C. Reyes, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–3249; email: *Ruth.Reyes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment, dated November 18, 2016, is available in ADAMS under Accession No. ML16323A335.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0441 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–93 and NPF–94, issued to SCE&G and Santee Cooper for operation of the VCSNS, Units 2 and 3, located in Fairfield County, South Carolina.

The proposed changes would revise the Combined Licenses to reflect an increase in the efficiency of the return of condensate utilized by the passive core cooling system to the in-containment refueling water storage tank (IRWST) to support the capability for long-term cooling. Because, this proposed change requires a departure from Tier 1 information in the Westinghouse AP1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with section 52.63(b)(1) of title 10 of the *Code of Federal Regulations* (10 CFR).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed containment condensate flow path changes provide sufficient condensate return flow to maintain In-containment Refueling Water Storage Tank (IRWST) level above the top of the Passive Residual Heat Removal Heat Exchanger (PRHR HX) tubes long enough to prevent PRHR HX performance degradation from that considered in the UFSAR Chapter 15 safety analyses. The added components are seismically qualified and constructed of only those materials appropriately suited for exposure to the reactor coolant environment as described in UFSAR Section 6.1. No aluminum is permitted to be used in the construction of these components so that they do not contribute to hydrogen production in containment.

The proposed changes clarify the design basis for the PRHR HX, which removes decay heat from the Reactor Coolant System (RCS) during a non-loss-of-coolant accident (non-LOCA). With operator action to avoid unnecessary Automatic Depressurization System (ADS) actuation based on RCS conditions, PRHR HX operation can be extended longer than is maintained automatically by the protection and safety monitoring system. Though analysis shows significantly greater capacity, the extent of capability of the PRHR HX in the licensing basis is changed from operating indefinitely to operating for at least 72 hours. If PRHR HX capability was exhausted after 72 hours, the ADS is actuated, which could result in significant containment floodup. However, the probabilistic analysis shows that the probability of design basis containment floodup after PRHR HX operation during a non-LOCA event is significantly lower than the probability of a small break LOCA, for which comparable containment floodup is anticipated. Therefore, the probability of significant containment floodup is not increased.

The proposed changes do not affect components whose failure could initiate an event, thus the probabilities of the accidents previously evaluated are not affected. The affected equipment does not adversely affect or interact with safety-related equipment or another radioactive material barrier. The proposed changes clarify the post-accident performance requirements for the PRHR HX. However, the proposed changes do not prevent the engineered safety features from performing their safety-related accident mitigating functions. The radioactive material source terms and release paths used in the safety analyses are unchanged, thus the radiological releases in the UFSAR accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The long-term safe shutdown analysis results show that the PRHR HX continues to meet its acceptance criterion, *i.e.,* to cool the Reactor Coolant System (RCS) to below 420°F in 36 hours. The added equipment does not adversely interface with any component whose failure could initiate an accident, or any component that contains radioactive material. The modified components do not incorporate any active features relied upon to support normal operation. The downspout and gutter return components are seismically qualified to remain in place and function during seismic and dynamic events. The containment condensate flow path changes do not create a new fault or sequence of events that could result in a radioactive material release.

The proposed change quantifies the duration that the PRHR HX is capable of maintaining adequate core cooling, and specifies that if the PRHR HX cooling capability is exhausted, the ADS is actuated. This involves the possibility of opening the ADS valves after the IRWST water level has decreased below the spargers, which promote steam condensation in the IRWST. During this condition, the loads on the IRWST, spargers, and any internal structures or components in the IRWST are still less than their limiting loads, and these SSCs are not adversely affected or cause a different mode of operation. Therefore, no new type of accident could be created by this condition.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not reduce the redundancy or diversity of any safety-related function. The added components are classified as safety-related, seismically qualified, and are designed to comply with applicable design codes. The proposed containment condensate flow path changes provide sufficient condensate return flow to maintain adequate IRWST water level for those events using the PRHR HX cooling function. The long-term Shutdown Temperature Evaluation results in UFSAR Appendix 19E show the PRHR HX continues to meet its acceptance criterion. The UFSAR Chapters 6 and 15 analyses results are not affected, thus margins to their regulatory acceptance criteria are unchanged. The former design basis, which stated the PRHR HX could bring the plant to 420 °F within 36 hours is changed to state the heat exchanger can establish safe, stable conditions in the reactor coolant system after a design basis event. Such safe, stable conditions may not coincide with a core average temperature of 420 °F. However, the PRHR HX is able to bring the RCS to a sufficiently low temperature such that RCS conditions are comparable to those achieved at 420 °F—peak cladding temperatures and departure from nucleate boiling are maintained within acceptable limits of the evaluation criteria with adequate margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of

that person's admitted contentions consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by February 13, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting

authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated November 18, 2016.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

Dated at Rockville, Maryland, this 8th day of December 2016.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–30152 Filed 12–14–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–040 and 52–041; NRC–2009–0337]

Combined License Application for Turkey Point Nuclear Plant, Units 6 and 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental environmental impact statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers, Jacksonville District, are issuing a supplement to the final environmental impact statement (EIS), NUREG–2176, ''Environmental Impact Statement for Combined Licenses (COL) for Turkey Point Nuclear Plant, Units 6 and 7.'' Florida Power and Light Company (FPL) submitted an application for COLs to construct and operate two new nuclear power plants at its Turkey Point site near Homestead, Florida. This supplement to the final EIS considers and responds to 59 comment letters that were inadvertently not included in the final EIS.

DATES: The supplement to the final EIS is available as of December 2, 2016.

ADDRESSES: Please refer to Docket ID NRC–2009–0337, when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0337. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC'S Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents,'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supplement to the final EIS is available in ADAMS under Accession No. ML16335A219.
- *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.
- *Project Web site:* The final EIS can be accessed online at the Turkey Point COL specific Web page at *http://www.nrc.gov/reactors/new-reactors/col/turkey-point.html.*
- *South Dade Regional Library and Homestead Branch Library:* The supplement final EIS is available for public inspection at 10750 SW 211th St., Cutler Bay, Florida 33189; and 700 N. Homestead Blvd., Homestead, Florida 33030.

FOR FURTHER INFORMATION CONTACT: Alicia Williamson Dickerson, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1878, email: *Alicia.Williamson@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC issued NUREG–2176, ''Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Nuclear Plant, Units 6 and 7,'' on October 28, 2016 (ADAMS Accession No. ML16335A219). On November 2, 2016, the NRC published a **Federal Register** notice (81 FR 76392) to announce the availability of the final EIS. After publication of the final EIS on October 28, 2016, however, the NRC identified 59 comment letters that were received before the draft EIS comment period closed but which were inadvertently not included in Appendix E to the final EIS.

The NRC staff considered all 59 comment letters and determined that none of them provides new and significant information regarding the project or its environmental impacts. In evaluating the comments in the letters, the staff determined that it had already addressed the majority of comments by responding to other similar comments in Appendix E to the final EIS. In developing a document to respond to the comments in the letters not included in the final EIS, the staff concluded that, for public access and readability, the most effective method for documenting the staff responses would include reprinting the applicable existing responses in Appendix E. The staff also recognized that responses drawn from the final EIS (including existing responses in Appendix E) would be

warranted if an existing response did not explicitly address a comment. Accordingly, the NRC staff is of the opinion that issuance of a supplement under the unique circumstances present here—primarily the length of the document due to the repetition of existing text from the final EIS for clarity and readability—will enhance the transparency of the NRC process for implementing the National Environmental Policy Act of 1969, as amended (NEPA) and will further the purposes of NEPA. Therefore, the NRC staff has prepared Supplement 1 to NUREG–2176 in accordance with section 51.92(c) of title 10 of the *Code of Federal Regulations* (10 CFR). This supplement solely responds to comments previously submitted on the draft EIS. Because there are no changes to the proposed action and the comments do not provide new and significant information relevant to environmental concerns bearing on the proposed action or its impacts, 10 CFR 51.92(f) does not require the NRC to solicit comments on the supplement.

The final EIS summarizes the results of the review team's environmental analysis of the FPL COL application for compliance with the requirements of 10 CFR part 51. On the basis of the information contained in the final EIS and this supplement, the review team finds that the comment letters not included in the final EIS did not provide information that would change the analysis in the final EIS or the NRC staff's recommendation to the Commission that the COLs be issued as proposed. This recommendation is based on (1) the application, including the Environmental Report (ER), submitted by FPL; (2) consultation with Federal, State, Tribal, and local agencies; (3) the review team's independent review; (4) consideration of public comments received on the environmental review; and (5) the assessments summarized in the EIS and this supplement, including the potential mitigation measures identified in the ER and the EIS.

Dated at Rockville, Maryland, this 8th day of December, 2016.

For the Nuclear Regulatory Commission.

Francis Akstulewicz,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–30154 Filed 12–14–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79518; File No. SR–NYSEArca–2016–84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3, and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, Relating to the Listing and Trading of Shares of the Long Dollar Gold Trust Under NYSE Arca Equities Rule 8.201

December 9, 2016.

I. Introduction

On June 1, 2016, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Long Dollar Gold Trust (''Fund'') under NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on June 21, 2016.[3] On July 27, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to September 19, 2016.[4] On July 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[5] On September 8, 2016, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.[6] On September 16, 2016, the Commission noticed the filing of Amendment No. 2, and instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.[8] On November 22, 2016, the Exchange filed Amendment No. 3, which replaced the proposed rule change as modified by Amendment No. 2.[9] The Commission has not received any comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78075 (June 15, 2016), 81 FR 40381.

[4] *See* Securities Exchange Act Release No. 78425 (July 27, 2016), 81 FR 50759 (August 2, 2016).

[5] In Amendment No. 1, the Exchange: (1) Provided additional information about WM/Reuters, which calculates the ''Spot Rate'' (discussed below); (2) provided additional information about calculation of the Spot Rate; (3) provided additional information about dissemination of the value of the underlying index; (4) corrected a statement that the net asset value (''NAV'') of the Shares would not be calculated during the occurrence of a Market Disruption Event (discussed below) or Extraordinary Event (discussed below), and instead stated that, if the LBMA Gold Price AM is unavailable during such circumstances, the Fund would calculate NAV using the last published LBMA Gold Price AM; (5) identified circumstances in which the Fund may reject a purchase order; (6) modified the circumstances in which the Fund may reject a redemption order; and (7) explained how market makers in the Shares would be able to hedge their positions. All amendments to the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2016-84/nysearca201684.shtml.*

[6] In Amendment No. 2, the Exchange: (1) Changed the names of the Fund and the Trust; (2) stated that the methodology of the underlying index is transparent; (3) explained how market makers in the Shares could calculate an approximate value for the underlying index during the Exchange's Core Trading Session, which is ordinarily between 9:30 a.m. to 4:00 p.m. Eastern time (''ET''); (4) made further modifications to its description of when and how NAV would be calculated, and when it would be disseminated; (5) disclosed more information regarding the availability of the value of the underlying index; (6) provided information about its ability to obtain information from Exchange Trading Permit Holders (''ETP Holders'') regarding their trading in currencies and currency derivatives; and (7) represented that it (a) may halt trading in the Shares during the trading day if an interruption occurs in the dissemination of the value of the underlying index, and (b) would halt trading in the Shares no later than the beginning of the trading day following the interruption if the interruption in the dissemination of the value of the underlying index persists past the trading day in which it occurs.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 78859, 81 FR 65431 (September 22, 2016) (''OIP''). The Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange 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.'' *Id.,* 81 FR at 65441.

[9] In Amendment No. 3, the Exchange: (1) Proposes to expand NYSE Arca Equities Rule 8.201(g), which governs market maker accounts, to include non-U.S. currencies; (2) states that the administrator of the WM/Reuters currency benchmarks complies with the International Organization of Securities Commissions (''IOSCO'') Principles for Financial Benchmarks; and (3) states that: (a) The Commission has previously approved the listing and trading of other issues of securities based on a WM/Reuters exchange rate or an index that uses such a rate, and (b) WM/Reuters utilizes the same methodology in calculating the ''Closing Spot Rate'' (discussed below) and the Spot Rate.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 3

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares, a series of the World Currency Gold Trust (''Trust''), under NYSE Arca Equities Rule 8.201.[10] Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and trade, or trade pursuant to unlisted trading privileges (''UTP''), ''Commodity-Based Trust Shares.'' [11] In addition, the Exchange proposes to amend NYSE Arca Equities Rule 8.201(g) (Market Maker Accounts) to add references to non-U.S. currencies in connection with market maker accounts used to hedge positions in an underlying commodity.

The Fund will not be registered as an investment company under the Investment Company Act of 1940 [12] and is not required to register under such act.

The Sponsor of the Fund and the Trust will be WGC USA Asset Management Company, LLC (''Sponsor'').[13] BNY Mellon Asset Servicing, a division of The Bank of New York Mellon (''BNYM''), will be the Fund's administrator (''Administrator'') and transfer agent (''Transfer Agent'') and will not be affiliated with the Trust, the Fund or the Sponsor. BNYM will also serve as the custodian of the Fund's cash, if any. HSBC Bank plc will be the custodian (''Custodian'') of the Fund's Gold (defined below).

The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rules 5.2(j)(5) and 8.201 of other precious metals and gold-based commodity trusts, including the Merk Gold Trust; [14] ETFS Gold Trust,[15] ETFS Platinum Trust [16] and ETFS Palladium Trust (collectively, the ''ETFS Trusts''); [17]APMEX Physical-1 oz. Gold Redeemable Trust; [18] Sprott Gold Trust; [19] SPDR Gold Trust (formerly, streetTRACKS Gold Trust); iShares Silver Trust; [20] and iShares COMEX Gold Trust.[21] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') [22] and listing of iShares COMEX Gold Trust and iShares Silver Trust on the American Stock Exchange LLC.[23] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[24]

Operation of the Fund

Gold bullion typically is priced and traded throughout the world in U.S. dollars. The Fund has been established as an alternative to traditional dollar-based gold investing. Although investors will purchase shares of the Fund with U.S. dollars, the Fund is designed to provide investors with the economic effect of holding gold in terms of a specific basket of major, non-U.S. currencies, such as the euro, Japanese yen and British pound (each, a ''Reference Currency''), rather than the U.S. dollar. Specifically, the Fund will seek to track the performance of the Solactive GLD® Long USD Gold Index, less Fund expenses. The Solactive GLD® Long USD Gold Index, or the ''Index,'' represents the daily performance of a long position in physical gold and a short position in the FX Basket [25] comprised of each of the Reference Currencies.[26] The Index is designed to measure daily gold bullion returns as though an investor had invested in Gold in terms of the FX Basket comprised of the Reference Currencies reflected in the Index. (The Index is described in more detail below under the heading ''Description of the Index.'')

The U.S. dollar value of an investment in Shares would therefore be expected to increase when both the price of Gold goes up and the value of the U.S. dollar increases against the value of the Reference Currencies comprising the FX Basket (as weighted in the Index). Conversely, the U.S. dollar value of an investment would be expected to decrease when the price of Gold goes down and the value of the U.S. dollar decreases against the value of the Reference Currencies comprising the FX Basket (as weighted in the Index). If Gold increases and the value of the U.S. dollar decreases against the value of the Reference Currencies comprising the FX Basket, or vice versa, the net impact of these changes will determine the value of the Shares on a daily basis.[27]

[10] On August 30, 2016, the Trust filed with the Commission Amendment No. 3 to its registration statement on Form S–1 under the Securities Act of 1933 relating to the Fund (File No. 333–206640) (''Registration Statement'').

[11] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[12] 15 U.S.C. 80a–1.

[13] The Trust will be a Delaware statutory trust consisting of multiple series, each of which will issue common units of beneficial interest, which represent units of fractional undivided beneficial interest in and ownership of such series. The term of the Trust and each series will be perpetual (unless terminated earlier in certain circumstances). The sole trustee of the Trust will be Delaware Trust Company (''Trustee'').

[14] Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEArca–2013–137).

[15] Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

[16] Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95).

[17] Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR–NYSEArca–2009–94).

[18] Securities Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18).

[19] Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113).

[20] *See* Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust)).

[21] *See* Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[22] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of street TRACKS Gold Trust on NYSE).

[23] *See* Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[24] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[25] ''FX Basket'' means the basket of Reference Currencies with weighting determined by the Index.

[26] ''Gold'' means gold bullion meeting the requirements of London Good Delivery Standards. London Good Delivery Standards are the specifications for weight dimensions, fineness (or purity), identifying marks and appearance set forth in ''The Good Delivery Rules for Gold and Silver Bars'' published by the London Bullion Markets Association (''LBMA'').

[27] For additional information regarding the gold bullion market, gold futures exchanges, and regulation of the global gold market, *see, e.g.,* Securities Exchange Act Release Nos. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–

Continued

The Fund is a passive investment vehicle and is designed to track the performance of the Index regardless of: (i) The value of Gold or any Reference Currency; (ii) market conditions; and (iii) whether the Index is increasing or decreasing in value. The Fund's holdings generally will consist entirely of Gold. Substantially all of the Fund's Gold holdings will be delivered by Authorized Participants (defined below) in exchange for Shares. The Fund will not hold any of the Reference Currencies. The Fund generally will not hold U.S. dollars (except from time to time in very limited amounts to pay expenses). The Fund's Gold holdings will not be managed and the Fund will not have any investment discretion.

The Fund's NAV will go up or down each ''Business Day'' based primarily on two factors.[28] The first is the change in the price of Gold measured in U.S. dollars from the prior Business Day. This drives the value of the Fund's Gold holdings measured in U.S. dollars up (as Gold prices increase) or down (as Gold prices fall). The second is the change in the value of the Reference Currencies comprising the FX Basket against the U.S. dollar from the prior Business Day. This drives the value of the Fund's Gold holdings measured in the Reference Currencies comprising the FX Basket up (when the value of the U.S. dollar against the Reference Currencies comprising the FX Basket increases) or down (when the value of the U.S. dollar against the Reference Currencies comprising the FX Basket declines). The value of Gold and the Reference Currencies comprising the FX Basket are based on publicly available, transparent prices—for Gold, the LBMA Gold Price AM (defined below), for currencies, the WMR Fix.[29]

Because the Fund generally will hold only Gold bullion (and not U.S. dollars or the Reference Currencies), the economic impact of changes to the value of the Reference Currencies against the U.S. dollar from day to day is reflected in the Fund by moving an amount of Gold ounces of equivalent value in or out of the Fund. Therefore, the Fund will seek to track the performance of the Index by entering into a transaction each Index Business Day with the ''Gold Delivery Provider'' pursuant to which Gold is moved in or out of the Fund.[30] The terms of this transaction are set forth in a written contract between the Fund and the Gold Delivery Provider referred to as the ''Gold Delivery Agreement.'' Pursuant to the terms of the Gold Delivery Agreement, the Fund will deliver Gold to, or receive Gold from, the Gold Delivery Provider each Index Business Day. The amount of Gold transferred will be equivalent to the Fund's profit or loss as if the Fund had exchanged the Reference Currencies comprising the FX Basket, in the proportion in which they are reflected in the Index, for U.S. dollars in an amount equal to the Fund's declared holdings of Gold on such day. If there is a currency gain (*i.e.,* the value of the U.S. dollar against the Reference Currencies comprising the FX Basket increases), the Fund will receive Gold. If there is a currency loss (*i.e.,* the value of the U.S. dollar against the Reference Currencies comprising the FX Basket decreases), the Fund will deliver Gold.[31] In this manner, the value of the Gold held by the Fund will be adjusted to reflect the daily change in the value of the Reference Currencies comprising the FX Basket against the U.S. dollar. The Gold Delivery Agreement requires Gold ounces equal to the value of the Gold Delivery Amount to be delivered to the custody account of the Fund or Gold Delivery Provider, as applicable. The fee that the Fund pays the Gold Delivery Provider for its services under the Gold Delivery Agreement will be accrued daily and reflected in the calculation of the Gold Delivery Amount.

The Fund does not intend to enter into any other Gold transactions other than with the Gold Delivery Provider as described in the Gold Delivery Agreement (except that the Fund may sell Gold to cover Fund expenses), and the Fund does not intend to hold any Reference Currency or enter into any currency transactions.

Description of the Index

The Index is maintained and calculated by a third-party data and index provider, Solactive AG (''Index Provider''). The Index Provider will license the Index to the Sponsor for use in connection with the Trust and the Fund. The Index Provider is not affiliated with the Trust, the Fund, the Sponsor, the trustee for the Trust, the Administrator, the Transfer Agent, the Custodian or the Gold Delivery Provider. The Index Provider is not affiliated with a broker-dealer. The Index Provider has adopted policies and procedures designed to prevent the spread of material non-public information about the Index.

The description of the strategy and methodology underlying the Index, which will be identified and described in the Registration Statement, is based on rules formulated by the Index Provider (''Index Rules''). The Index Rules, which will be described in the Registration Statement, will govern the calculation and constitution of the Index and other decisions and actions related to its maintenance. The Index is described as a ''notional'' or ''synthetic'' portfolio or strategy because there is no actual portfolio of assets to which any person is entitled or in which any person has any ownership interest. The Index references certain assets (*i.e.,* Gold and the Reference Currencies comprising the FX Basket), the performance of which will be used as a reference point for calculating the daily performance of the Index (''Index Level''). The Index seeks to track the daily performance of a long position in physical Gold and a short position in the Reference Currencies comprising the FX Basket (as weighted in the Index). If the Gold Price (as defined below) increases and the Reference Currencies comprising the FX Basket depreciate against the U.S. dollar, the Index Level will increase. Conversely, if the Gold Price decreases and the Reference Currencies comprising the FX Basket appreciate against the U.S. dollar, the Index Level will decrease. In certain cases, the appreciation of the Gold Price or the depreciation of the FX Basket comprised of the Reference Currencies may be offset by the appreciation of the FX Basket comprised of the Reference Currencies or the depreciation of the Gold Price, as applicable. The net impact of these changes determines the Index Level on a daily basis.

The Index values Gold on a daily basis using the ''Gold Price.'' The Gold Price generally is the LBMA Gold Price AM. The ''LBMA Gold Price'' means the price per troy ounce of Gold stated in U.S. dollars as set via an electronic auction process run twice daily at 10:30 a.m. and 3:00 p.m., London time each Business Day as calculated and administered by ICE Benchmark Administration Limited (''IBA'') and

NYSEArca–2009–40) (order approving Exchange listing and trading of the ETFS Gold Trust); and 66627 (March 20, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSE Arca–2012–18) (order approving Exchange listing and trading of the APMEX Physical-1 oz. Gold Redeemable Trust).

[28] A Business Day with respect to the Fund is any day the Exchange is open for trading.

[29] The WMR Fix is the World Markets Company plc foreign exchange benchmark rate.

[30] The Gold Delivery Provider, Merrill Lynch International, is a company incorporated in England and Wales and regulated by the Prudential Regulation Authority (''PRA'') and the Financial Conduct Authority (''FCA''). The Gold Delivery Provider will not be affiliated with the Trust, the Fund, the Sponsor, the Trustee, the Administrator, the Transfer Agent, the Custodian or the Index Provider (defined below).

[31] If the applicable currency exchange rates did not change from one day to the next, or the net impact of such changes was zero, then the Fund would neither deliver nor receive Gold pursuant to the Gold Delivery Agreement.

published by LBMA on its Web site. The ''LBMA Gold Price AM'' is the 10:30 a.m. LBMA Gold Price. IBA, an independent specialist benchmark administrator, provides the price platform, methodology and the overall administration and governance for the LBMA Gold Price.

As noted herein, the term ''Reference Currencies'' refers to the following non-U.S. currencies: The euro, Japanese yen, British pound sterling, Canadian dollar, Swedish krona and Swiss franc. Each Reference Currency comprising the FX Basket is expressed in terms of a number of foreign currency units relative to one U.S. dollar (*e.g.,* a number of Japanese yen per one U.S. dollar) or in terms of a number of U.S. dollars per one unit of the reference currency (*e.g.,* a number of U.S. dollars per one euro).

The Index references European Union euro (''euro'' or ''EUR''), the Japanese yen (''JPY'' or ''yen''), the British pound sterling (''GBP''), the Swiss franc (''CHF''), the Canadian dollar (''CAD'') and the Swedish Krona (''SEK'') (each of which is measured against U.S. dollars). The weightings of each currency referenced are as follows: Euro (57.6%), yen (13.6%), GBP (11.9%), CAD (9.1%), SEK (4.2%) and CHF (3.6%).

Reference Currency Index values generally are calculated using the published WM/Reuters (''WMR'') [32] Spot Rate (''Spot Rate'') as of 9:00 a.m., London time associated with each Reference Currency.[33] The Spot Rate is the rate at which a Reference Currency comprising the FX Basket can be exchanged for U.S. dollars on an immediate basis, subject to the applicable settlement cycle. Thus, if an investor wanted to convert U.S. dollars into euros, the investor could enter into a spot transaction at the Spot Rate (subject to the bid/ask) and would receive euros in a number of days, depending on the settlement cycle of that currency. Generally, the settlement of a ''spot'' transaction is two currency business days (except in the case of Canadian dollars, which settle on the next business day). The following table sets forth the Reference Currencies comprising the FX Basket (each of which is measured against U.S. dollars), the applicable ''Reuters Page'' for each Spot Rate referenced by the Index and the market convention for quoting such currency.[34]

Reference currency	Reuters page	Market convention for quotation
EUR/USD	USDEURFIX=WM	Number of USD per one EUR.
USD/JPY	USDJPYFIX=WM	Number of JPY per one USD.
GBP/USD	USDGBPFIX=WM	Number of USD per one GBP.
USD/CAD	USDCADFIX=WM	Number of CAD per one USD.
USD/SEK	USDSEKFIX=WM	Number of SEK per one USD.
USD/CHF	USDCHFFIX=WM	Number of CHF per one USD.

Settlement in most spot currency transactions is two currency business days after the trade date. A ''spot-next trade'' effectively extends the spot settlement cycle by one Business Day (*i.e.,* the ''next'' day) and a ''spot-next forward point'' represents the difference in price between a spot transaction and a spot-next trade. Combining a spot-next trade with a spot transaction allows for exposure to the currency without taking delivery. By entering on each Index Business Day (as defined below) into notional spot-next trades that are closed the next Index Business Day against spot transactions, the Index is exposed to the Reference Currencies comprising the FX Basket without having to take delivery of these currencies. The Index approximates the cost of entering into a spot-next trade by linearly interpolating the cost of that trade based on the WM/Reuters ''SW—Spot Week (One Week)'' forward rates and a spot transaction.

In general, the Index is calculated and published by the Index Provider each Index Business Day, unless there is a ''Market Disruption Event'' or ''Extraordinary Event'' as described below. The Index value is disseminated each Index Business Day at approximately 6:00 a.m. ET.

The Index methodology is transparent. Market makers will recalculate an approximate Index value using reliable intraday prices of gold and the relevant Index currencies to identify arbitrage opportunities that present themselves during the

[32] WMR provides both intraday and closing fixes for currency spot rates, forward contracts and non-deliverable forward contracts. WMR rates are widely utilized by financial institutions in evaluating global markets. Thomson Reuters Benchmark Services Limited, the administrator of the WM/Reuters spot, forward and non-deliverable foreign exchange benchmark rates, has stated that it complies with the IOSCO Principles for Financial Benchmarks. *See http://financial.thomsonreuters.com/content/dam/openweb/documents/pdf/financial/wm-reuters-iosco-principles-statement.pdf.*

[33] The Spot Rate is calculated by WMR using observable data from arms-length transactions between buyers and sellers in the applicable currency market. The World Markets Company plc (''WM'') provides an exchange rate service that publishes Spot Rates at fixed times throughout the global trading day. WM does not use a panel or polling solicitation process to obtain underlying data in the benchmark calculation process. WM uses transactional data to set ''Trade Rates,'' reflecting data from actual transactions entered into on an arm's length basis between buyers and sellers in that market, where that data is available and reflects sufficient liquidity. The Thomson Reuters Market Data System is the primary infrastructure used to source spot foreign exchange rates used in the calculation of the rates. Other systems may be used where the appropriate rates are not available on the Thomson Reuters architecture. Over a five-minute fix period, actual trades executed and bid and offer order rates from the order matching systems are captured every second from 2 minutes 30 seconds before to 2 minutes 30 seconds after the time of the fix. From each data source, a single traded rate will be captured—this will be identified as a bid or offer depending on whether the trade is a buy or sell. A pre-defined spread set for each currency at each fix will be applied to the Trade Rate to calculate the opposite bid or offer. All captured trades will be subjected to validation checks. This may result in some captured data being excluded from the fix calculation. The WMR methodology guide is available at: *http://www.wmcompany.com/pdfs/WMReutersMethodology.pdf.*

[34] The Commission has previously approved for Exchange trading issues of Currency Trust Shares based on the WM/Reuters closing rate. *See, e.g.,* Securities Exchange Act Release No. 58365 (August 14, 2008), 73 FR 49522 (August 21, 2008) (SR–NYSEArca–2008–81) (notice of filing and order granting accelerated approval of proposed rule change relating to listing and trading of four CurrencyShares Trusts). The Sponsor represents that WM/Reuters utilizes the same methodology in calculating the Closing Spot Rate and the ''Spot Rate'' as defined herein. In addition, the Commission has approved for Exchange listing and trading exchange-traded products based on indexes that use the WM/Reuters Closing Spot Rate to calculate the applicable foreign currency exchange rate. *See, e.g.,* Securities Exchange Act Release Nos. 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (order approving proposed rule change relating to the listing and trading on the American Stock Exchange of shares of eight funds of the ProShares Trust based on MSCI international equity indexes); 55985 (June 29, 2007), 72 FR 37291 (July 9, 2007) (SR–NYSEArca–2007–47) (notice of filing and order granting accelerated approval of proposed rule change to list and trade shares of the iShares FTSE EPRA/NAREIT Asia Index Funds). *See also,* Securities Exchange Act Release No. 58458 (September 3, 2008), 73 FR 52717 (September 10, 2008) (SR–NYSEArca–2008–95) (notice of filing and immediate effectiveness of proposed rule change relating to a change in net asset value calculations for CurrencyShares Trusts to use the WM/Reuters Closing Spot Rate).

Exchange's Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., ET).

The Gold Delivery Agreement

The Fund has entered into a written contract with the Gold Delivery Provider. Subject to the terms of the Gold Delivery Agreement, on a daily basis, the Gold Delivery Provider will (i) calculate the Gold Delivery Amount and (ii) deliver Gold ounces equal to the U.S. dollar value of the Gold Delivery Amount into or out of the Fund. The Gold Delivery Amount is the amount of Gold ounces to be delivered into or out of the Fund on a daily basis to reflect price movements in the Reference Currencies comprising the FX Basket against the U.S. dollar from the prior Index Business Day (assuming no Market Disruption Event or Extraordinary Event has occurred or is continuing, as described in more detail below).

On each Index Business Day, the Gold Delivery Provider determines the notional exposure for each Reference Currency comprising the FX Basket based upon their respective Index weights. The total notional exposure for each Reference Currency on an Index Business Day takes into account the NAV of the Fund (which takes into account creation and redemption orders received on that day).

The Gold Delivery Provider then determines the ''FX PnL'' which captures the effect of changes in the daily value of the Reference Currencies comprising the FX Basket in their respective weights by calculating the change in the Spot Rate from the prior Index Business Day to the current Index Business Day and adjusting that change to reflect a notional spot-next trade because delivery of currencies is not being taken. The Gold Delivery Provider may use another rate if any Spot Rate is delayed or unavailable as set forth in the Gold Delivery Agreement. The Gold Delivery Provider generally will make this calculation outside of U.S. market hours (at approximately 4:00 a.m. ET) based on the prices of the Reference Currencies comprising the FX Basket published at the ''WMR FX Fixing Time,'' which is generally at 9:00 a.m., London Time.

The FX PnL is divided by the Gold Price (*i.e.,* the LBMA Gold Price AM) to determine the Gold Delivery Amount. The fee that the Fund pays the Gold Delivery Provider for its services under the Gold Delivery Agreement is accrued daily and reflected in the calculation of the Gold Delivery Amount.

If the Gold Delivery Amount is a positive number (meaning that the Fund has experienced a currency gain on the notional short position in the FX Basket comprised of Reference Currencies), the Gold Delivery Provider will transfer to the Fund's custody account an amount of Gold (in ounces) equal to the Gold Delivery Amount. If the Gold Delivery Amount is a negative number (meaning that the Fund has experienced a currency loss on the notional short position in the FX Basket comprised of Reference Currencies), the Fund will transfer to the Gold Delivery Provider's custody account an amount of Gold (in ounces) equal to the Gold Delivery Amount.

Market Disruption and Extraordinary Events

From time to time, unexpected events may cause the calculation of the Index and/or the operation of the Fund to be disrupted. These events are expected to be relatively rare, but there can be no guarantee that these events will not occur. These events are referred to as either ''Market Disruption Events'' or ''Extraordinary Events'' depending largely on their significance and potential impact to the Index and Fund. Market Disruption Events generally include disruptions in the trading of Gold or the Reference Currencies comprising the FX Basket, delays or disruptions in the publication of the LBMA Gold Price or the Reference Currency prices, and unusual market or other events that are tied to either the trading of gold or the Reference Currencies comprising the FX Basket or otherwise have a significant impact on the trading of gold or the Reference Currencies comprising the FX Basket. For example, market conditions or other events which result in a material limitation in, or a suspension of, the trading of physical Gold generally would be considered Market Disruption Events, as would material disruptions or delays in the determination or publication of the LBMA Gold Price AM. Similarly, market conditions which prevent, restrict or delay the Gold Delivery Provider's ability to convert a Reference Currency to U.S. dollars or deliver a Reference Currency through customary channels generally would be considered a Market Disruption Event, as would material disruptions or delays in the determination or publication of WMR spot prices for any Reference Currency comprising the FX Basket. The complete definition of a Market Disruption Event is set forth below.

A ''Market Disruption Event'' occurs if either an ''FX Basket Disruption Event'' or a ''Gold Disruption Event'' occurs.

An ''FX Basket Disruption Event'' occurs if any of the following exist on any ''Index Business Day'' [35] with respect to the Reference Currencies comprising the FX Basket:

(i) An event, circumstance or cause (including, without limitation, the adoption of or any change in any applicable law or regulation) that has had or would reasonably be expected to have a materially adverse effect on the availability of a market for converting such Reference Currency to US Dollars (or vice versa), whether due to market illiquidity, illegality, the adoption of or change in any law or other regulatory instrument, inconvertibility, establishment of dual exchange rates or foreign exchange controls or the occurrence or existence of any other circumstance or event, as determined by the Index Sponsor; or

(ii) the failure of Reuters to announce or publish the relevant spot exchange rates for any Reference Currency in the FX Basket; or

(iii) any event or any condition that (I) results in a lack of liquidity in the market for trading any Reference Currency that makes it impossible or illegal for market participants (a) to convert from one currency to another through customary commercial channels, (b) to effect currency transactions in, or to obtain market values of, such, currency, (c) to obtain a firm quote for the related exchange rate, or (d) to obtain the relevant exchange rate by reference to the applicable price source; or (II) leads to any governmental entity imposing rules that effectively set the prices of any of the currencies; or

(iv) the declaration of (a) a banking moratorium or the suspension of payments by banks, in either case, in the country of any currency used to determine any Reference Currency exchange rate, or (b) capital and/or currency controls (including, without limitation, any restriction placed on assets in or transactions through any account through which a non-resident of the country of any currency used to determine the currency exchange rate may hold assets or transfer monies outside the country of that currency, and any restriction on the transfer of funds, securities or other assets of market participants from, within or outside of the country of any currency used to determine the applicable exchange rate.

[35] An ''Index Business Day'' is (i) any day that is a business day in New York and London, (ii) any day (other than a Saturday or Sunday) on which the LBMA is scheduled to publish the LBMA Gold Price AM, and (iii) any day (other than a Saturday or Sunday) on which WM Company is scheduled to publish prices for each of the Reference Currency pairs comprising the FX Basket.

A ''Gold Disruption Event'' occurs if any of the following exist on any Index Business Day with respect to gold:

(i) (a) The failure of the LBMA to announce or publish the LBMA Gold Price (or the information necessary for determining the price of gold) on that Index Business Day, (b) the temporary or permanent discontinuance or unavailability of the LBMA or the LBMA Gold Price; or

(ii) the material suspension of, or material limitation imposed on, trading in Gold by the LBMA; or

(iii) an event that causes market participants to be unable to deliver gold bullion loco London under rules of the LBMA by credit to an unallocated account at a member of the LBMA; or

(iv) the permanent discontinuation of trading of gold on the LBMA or any successor body thereto, the disappearance of, or of trading in, gold; or

(v) a material change in the formula for or the method of calculating the price of gold, or a material change in the content, composition or constitution of gold.

The occurrence of a Market Disruption Event for five Index Business Days generally would be considered an Extraordinary Event for the Index and Fund.

Consequences of a Market Disruption or Extraordinary Event

On any Index Business Day in which a Market Disruption Event or Extraordinary Event has occurred or is continuing, the Index Provider generally will calculate the Index based on the following fallback procedures: (i) Where the Market Disruption Event is based on the Gold Price, the Index will be kept at the same level as the previous Index Business Day and updated when the Gold Price is no longer disrupted; (ii) where the Gold Price is not disrupted but one of the Reference Currency prices is disrupted, the Index will be calculated in the ordinary course except that the disrupted Reference Currency will be kept at its value from the previous Index Business Day and updated when it is no longer disrupted; and (iii) if both the Gold Price and a Reference Currency price are disrupted, the Index will be kept at the same level as the previous Index Business Day and updated when such prices are no longer disrupted. If a Market Disruption Event has occurred and is continuing for five (5) or more consecutive Index Business Days, the Index Provider will calculate a substitute price for each index component that is disrupted. If an Extraordinary Event has occurred and is continuing, the Index Provider shall be responsible for making any decisions regarding the future composition of the Index and implement any necessary adjustments that might be required. If necessary, the Fund may use alternate pricing sources to calculate NAV during the occurrence of any Market Disruption or Extraordinary Event.[36] If the LBMA Gold Price AM is unavailable during the occurrence of a Market Disruption Event or Extraordinary Event, the Fund will calculate NAV using the last published LBMA Gold Price AM.

The London Gold Bullion Market

Although the market for physical gold is global, most over-the-counter, or ''OTC,'' trades are cleared through London. In addition to coordinating market activities, the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the ''London Good Delivery Lists,'' which are the lists of LBMA accredited melters and assayers of gold. The LBMA also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.

The term ''loco London'' refers to gold bars physically held in London that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of a LBMA acceptable refiner) and appearance set forth in ''The Good Delivery Rules for Gold and Silver Bars'' published by the LBMA. Gold bars meeting these requirements are known as ''London Good Delivery Bars.'' All of the gold held by the Fund will be London Good Delivery Bars meeting the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars as set forth in ''The Good Delivery Rules for Gold and Silver Bars'' published by the LBMA.

The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams = 32.1507465 troy ounces and 1 troy ounce = 31.1034768 grams. A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as 400-ounce bars, a London Good Delivery Bar must contain between 350 and 430 fine troy ounces of gold, with a minimum fineness (or purity) of 995 parts per 1,000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar.

The LBMA Gold Price

IBA hosts a physically settled, electronic and tradeable auction process that provides a market-based platform for buyers and sellers to trade physical spot Gold. The final auction price is used and published to the market as the ''LBMA Gold Price benchmark.'' The LBMA Gold Price is set twice daily at 10:30 a.m., London time and 3:00 p.m., London time in three currencies: U.S. dollars, euro and British pounds sterling. The LBMA Gold Price is a widely used benchmark for the physical spot price of Gold and is quoted by various financial information sources.

Participants in the IBA auction process submit anonymous bids and offers which are published on screen and in real-time. Throughout the auction process, aggregated Gold bids and offers are updated in real-time with the imbalance calculated and the price updated every 45 seconds until the buy and sell orders are matched. When the net volume of all participants falls within a pre-determined tolerance, the auction is deemed complete and the applicable LBMA Gold Price is published. Information about the auction process (such as aggregated bid and offer volumes) will be immediately available after the auction on the IBA's Web site.

The LBMA Gold Price replaced the widely used ''London Gold Fix'' as of March 20, 2015.

The Gold Futures Markets

Although the Fund will not invest in gold futures, information about the gold futures market is relevant as such markets contribute to, and provide evidence of, the liquidity of the overall market for Gold.

The most significant gold futures exchange is COMEX, part of the CME Group, Inc., which began to offer trading in gold futures contracts in 1974. TOCOM (Tokyo Commodity Exchange) is another significant futures exchange and has been trading gold since 1982. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. As a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit trading on margin. Both COMEX and TOCOM operate through a central clearance system and in each case, the

[36] The Exchange may suspend trading in the Shares in the event the Sponsor suspends the right of redemptions.

clearing organization acts as a counterparty for each member for clearing purposes. Gold futures contracts also are traded on the Shanghai Gold Exchange and the Shanghai Futures Exchange.

The global gold markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants.

Net Asset Value

The Administrator will determine the NAV of Shares each Business Day. The NAV of Shares will be the aggregate value of the Fund's assets (which include gold payable, but not yet delivered, to the Fund) less its liabilities (which include accrued but unpaid fees and expenses). The NAV of the Fund will be calculated based on the price of Gold per ounce applied against the number of ounces of Gold owned by the Fund. For purposes of calculating NAV, the number of ounces of Gold owned by the Fund is adjusted up or down on a daily basis to reflect the Gold Delivery Amount. The number of ounces of Gold held by the Fund also reflects the amount of Gold delivered into (or out of) the Fund on a daily basis by Authorized Participants (as described below) creating and redeeming Shares. The number of ounces of Gold held by the Fund is adjusted downward by the Sponsor's fee and the expenses of the Gold Delivery Agreement.

In determining the Fund's NAV, the Administrator generally will value the Gold held by the Fund based on the LBMA Gold Price AM for an ounce of Gold. If no LBMA Gold Price AM is made on a particular Business Day (including a Business Day that is not an Index Business Day), the next most recent LBMA Gold Price AM determined prior to that Business Day generally will be used in the determination of the NAV of the Fund, unless the Sponsor determines that such price is inappropriate to use as the basis for such determination.[37] If the Sponsor determines that such price is inappropriate to use, it shall identify an alternate basis for evaluation of the Gold held by the Fund. In such case, the Sponsor would, for example, look to the current trading price of gold from other reported sources, such as dealer quotes, broker quotes or electronic trading data, to value the Fund's Shares. Although the Fund will not hold the Reference Currencies, the Gold Delivery Provider generally will value the Reference Currencies based on the rates in effect as of the WMR FX Fixing Time, which is generally at 9:00 a.m., London Time (though other prices may be used if the 9:00 a.m. rate is delayed or unavailable). The Administrator will also determine the NAV per Share, which equals the NAV of the Fund, divided by the number of outstanding Shares. Unless there is a Market Disruption Event or Extraordinary Event with respect to the price of gold, NAV generally will be calculated and disseminated by 12:00 p.m. ET.

Creation and Redemption of Shares

The Fund expects to create and redeem Shares but only in Creation Units (a Creation Unit equals a block of 10,000 Shares or more). The creation and redemption of Creation Units requires the delivery to the Fund (or the distribution by the Fund in the case of redemptions) of the amount of Gold and any cash, if any, represented by the Creation Units being created or redeemed. The total amount of Gold and cash, if any, required for the creation of Creation Units will be based on the combined NAV of the number of Creation Units being created or redeemed. The initial amount of Gold required for deposit with the Fund to create Shares is 1,000 ounces per Creation Unit. The number of ounces of Gold required to create a Creation Unit or to be delivered upon redemption of a Creation Unit will change over time depending on Index performance net of the fees charged by the Fund and the Gold Delivery Provider. Creation Units may be created or redeemed only by ''Authorized Participants'' (as described below), who may be required to pay a transaction fee for each order to create or redeem Creation Units as will be set forth in the Registration Statement. Authorized Participants may sell to other investors all or part of the Shares included in the Creation Units they purchase from the Fund.

Creation Procedures—Authorized Participants

Authorized Participants are the only persons that may place orders to create and redeem Creation Units. To become an Authorized Participant, a person must enter into a Participant Agreement. All Gold bullion must be delivered to the Fund and distributed by the Fund in unallocated form through credits and debits between an Authorized Participant's unallocated account (''Authorized Participant Unallocated Account'') and the Fund's unallocated account (''Fund Unallocated Account'') (except for Gold delivered to or from the Gold Delivery Provider pursuant to the Gold Delivery Agreement). All Gold bullion must be of at least a minimum fineness (or purity) of 995 parts per 1,000 (99.5%) and otherwise conform to the rules, regulations practices and customs of the LBMA, including the specifications for a London Good Delivery Bar.

On any Business Day, an Authorized Participant may place an order with the Fund to create one or more Creation Units. Purchase orders must be placed by 5:30 p.m., ET. The day on which the Fund receives a valid purchase order is the purchase order date. By placing a purchase order, an Authorized Participant agrees to deposit Gold with the Fund, or a combination of Gold and cash, if any, as described below.[38] Prior to the delivery of Creation Units for a purchase order, the Authorized Participant must also have wired to the Fund the non-refundable transaction fee due for the purchase order.

The total deposit of Gold (and cash, if any) required to create each Creation Unit is referred to as the ''Creation Unit Gold Delivery Amount.'' The Creation Unit Gold Delivery Amount is the number of ounces of Gold required to be delivered to the Fund by an Authorized Participant in connection with a creation order for a single Creation Unit.[39] The Creation Unit Gold Delivery Amount will be determined on the Business Day following the date such creation order is accepted. It is calculated by multiplying the number of Shares in a Creation Unit by the number of ounces of Gold associated with Shares on the Business Day after the day the creation order is accepted. In addition, because the Gold Delivery Amount for the Fund does not reflect creation order transactions (see the section herein entitled ''The Gold Delivery Agreement''), the Creation Unit Gold Delivery Amount is required to

[37] The Exchange notes that such valuation procedure is substantially similar to that utilized by other issues of commodity-based exchange-traded products approved by the Commission for exchange listing. *See, e.g.,* Securities Exchange Act Release No. 59895 at p.17 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (approving listing on NYSE Arca of the ETFS Gold Trust); Securities Exchange Act Release No. 53521 at n.32 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust); and Securities Exchange Act Release No. 51058 at p.13 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[38] The Sponsor anticipates that in the ordinary course of the Fund's operations cash generally will not be part of any Creation Unit.

[39] The ''Creation Unit Gold Delivery Amount'' is also used to refer to the number of ounces of Gold to be paid by the Fund to an Authorized Participant in connection with the redemption of a Creation Unit. *See* ''Redemption Procedures—Authorized Participants'' herein.

reflect the Gold Delivery Amount associated with such creation order. This amount is determined on the Business Day following the date such creation order is accepted.

An Authorized Participant who places a purchase order is responsible for crediting its Authorized Participant Unallocated Account with the required Gold deposit amount by the end of the third Business Day in London following the purchase order date. Upon receipt of the Gold deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Fund, will transfer on the third Business Day following the purchase order date the Gold deposit amount from the Authorized Participant Unallocated Account to the Fund Unallocated Account and the Administrator will direct the Depository Trust Company (''DTC'') to credit the number of Creation Units ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership and safekeeping of Gold until such Gold has been received by the Fund will be borne solely by the Authorized Participant. If Gold is to be delivered other than as described above, the Sponsor is authorized to establish such procedures and to appoint such custodians and establish such custody accounts as the Sponsor determines to be desirable.

Acting on standing instructions given by the Fund, the Custodian will transfer the Gold deposit amount from the Fund Unallocated Account to the Fund's allocated account by allocating to the allocated account specific bars of Gold which the Custodian holds or instructing a sub-custodian to allocate specific bars of Gold held by or for the sub-custodian. The Gold bars in an allocated Gold account are specific to that account and are identified by a list which shows, for each Gold bar, the refiner, assay or fineness, serial number and gross and fine weight. Gold held in the Fund's allocated account is the property of the Fund and is not traded, leased or loaned under any circumstances.

The Custodian will use commercially reasonable efforts to complete the transfer of Gold to the Fund's allocated account prior to the time by which the Administrator is to credit the Creation Unit to the Authorized Participant's DTC account; if, however, such transfers have not been completed by such time, the number of Creation Units ordered will be delivered against receipt of the Gold deposit amount in the Fund's unallocated account, and all Shareholders will be exposed to the risks of unallocated Gold to the extent of that Gold deposit amount until the Custodian completes the allocation process.

The Fund has the right, but not the obligation, to reject a purchase order if (i) the order is not in proper form as described in the Participant Agreement, (ii) the fulfillment of the order, in the opinion of its counsel, might be unlawful, (iii) if the Fund determines that acceptance of the order from an Authorized Participant would expose the Fund to credit risk; or (iv) circumstances outside the control of the Administrator, the Sponsor or the Custodian make the purchase, for all practical purposes, not feasible to process.

Redemption Procedures—Authorized Participants

The procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any Business Day, an Authorized Participant may place an order with the Fund to redeem one or more Creation Units. Redemption orders must be placed by 5:30 p.m. ET. A redemption order so received is effective on the date it is received in satisfactory form by the Fund. An Authorized Participant may be required to pay a transaction fee per order to create or redeem Creation Units as will be set forth in the Registration Statement.

The redemption distribution from the Fund consists of a credit in the amount of the Creation Unit Gold Delivery Amount to the Authorized Participant Unallocated Account of the redeeming Authorized Participant. The Creation Unit Delivery Amount for redemptions is the number of ounces of Gold held by the Fund associated with the Shares being redeemed plus, or minus, the cash redemption amount (if any). The Sponsor anticipates that in the ordinary course of the Fund's operations there will be no cash distributions made to Authorized Participants upon redemptions. In addition, because the Gold to be paid out in connection with the redemption order will decrease the amount of Gold subject to the Gold Delivery Agreement, the Creation Unit Gold Delivery Amount reflects the cost to the Gold Delivery Provider of resizing (*i.e.,* decreasing) its positions so that it can fulfill its obligations under the Gold Delivery Agreement.

The redemption distribution due from the Fund is delivered to the Authorized Participant on the third Business Day following the redemption order date if, by 10:00 a.m. ET on such third Business Day, the Fund's DTC account has been credited with the Creation Units to be redeemed. If the Administrator's DTC account has not been credited with all of the Creation Units to be redeemed by such time, the redemption distribution is delivered to the extent of whole Creation Units received. Any remainder of the redemption distribution is delivered on the next Business Day to the extent of remaining whole Creation Units received if the Administrator receives the fee applicable to the extension of the redemption distribution date which the Administrator may, from time to time, determine and the remaining Creation Units to be redeemed are credited to the Administrator's DTC account by 10:00 a.m. ET on such next Business Day. Any further outstanding amount of the redemption order will be cancelled. The Administrator is also authorized to deliver the redemption distribution notwithstanding that the Creation Units to be redeemed are not credited to the Administrator's DTC account by 10:00 a.m. ET on the third Business Day following the redemption order date if the Authorized Participant has collateralized its obligation to deliver the Creation Units through DTC's book entry system on such terms as the Sponsor and the Administrator may from time to time agree upon.

The Custodian transfers the redemption Gold amount from the Fund's allocated account to the Fund's unallocated account and, thereafter, to the redeeming Authorized Participant's Authorized Participant Unallocated Account.

The Fund may, in its discretion, suspend the right of redemption, or postpone the redemption settlement date: (1) For any period during which NYSE Arca is closed other than customary weekend or holiday closings, or trading on NYSE Arca is suspended or restricted, (2) for any period during which an emergency exists as a result of which delivery, disposal or evaluation of Gold is not reasonably practicable, or (3) such other period as the Sponsor determines to be necessary for the protection of the Shareholders, such as during the occurrence of a Market Disruption Event or Extraordinary Event based on the Gold Price.

The Fund has the right, but not the obligation, to reject a redemption order if (i) the order is not in proper form as described in the Participant Agreement, (ii) the fulfillment of the order, in the opinion of its counsel, might be unlawful, (iii) if the Fund determines that acceptance of the order from an Authorized Participant would expose the Fund to credit risk; or (iv) circumstances outside the control of the

Administrator, the Sponsor or the Custodian make the redemption, for all practical purposes, not feasible to process.

Secondary Market Trading

While the Fund's investment objective is for the Shares to reflect the performance of Gold bullion in terms of the Reference Currencies reflected in the Index, less the expenses of the Fund, the Shares may trade in the secondary market at prices that are lower or higher relative to their NAV per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the COMEX, London, Zurich and Singapore. While the Shares will trade on NYSE Arca until 8:00 p.m. ET, liquidity in the global gold market will be reduced after the close of the COMEX at 1:30 p.m. ET. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

The Adviser represents that market makers in the Shares will be able to efficiently hedge their positions through use of spot gold transactions and spot currency transactions in Reference Currencies comprising the FX Basket. Transactions in spot gold and spot currencies during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m. ET) take place in a highly liquid market; such transactions that hedge the market makers' positions in Shares are expected to facilitate the market maker's ability to trade Shares at a price that is not at a material discount or premium to NAV.

Fund Expenses

The Sponsor will receive an annual fee equal to 0.33% of the daily NAV of the Fund. In return the Sponsor will be responsible for the payment of the ordinary fees and expenses of the Fund, including the Administrator's fee, the Custodian's fee, and the Index Provider's fee. This will be the case regardless of whether the ordinary expenses of the Fund exceed 0.33% of the daily NAV of the Fund. In addition, the Fund will pay the Gold Delivery Provider an annual fee of 0.17% of the daily NAV, so that the Fund's total annual expense ratio will be equal to 0.50%. The Sponsor's fee and payment to the Gold Delivery Provider are expected to be the only ordinary recurring expenses of the Fund.

Availability of Information Regarding Gold and Reference Currency Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, or the spot price of the Reference Currencies, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of information about gold and currency prices and gold and currency markets available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of Gold and pricing information for the Reference Currencies from various financial information service providers, such as Reuters and Bloomberg.

Reuters and Bloomberg, for example, provide at no charge on their Web sites delayed information regarding the spot price of Gold and last sale prices of Gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on Gold prices directly from market participants. Complete real-time data for Gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk.*

In addition, Reuters and Bloomberg, for example, provide at no charge on their Web sites delayed information regarding the spot price of each Reference Currency, as well as information about news and developments in the currency markets. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on currency transactions directly from market participants. Complete real-time data for currency transactions are available by subscription from Reuters and Bloomberg. There are a variety of other public Web sites providing information about the Reference Currencies and currency transactions, ranging from those specializing in currency trading to sites maintained by major newspapers.

Availability of Information

The Fund's Web site (*www.spdrgoldshares.com*) will provide an intraday indicative value (''IIV'') per Share for the Shares updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m. ET). The IIV will be calculated based on the amount of Gold held by the Fund and (i) a price of Gold derived from updated bids and offers indicative of the spot price of Gold, and (ii) intra-day exchange rates for each Reference Currency against the U.S. dollar.[40] The Fund's Web site will also provide the Creation Basket Deposit and the NAV of the Fund as calculated each Business Day by the Administrator.

In addition, the Web site for the Fund will contain the following information, on a per Share basis, for the Fund: (a) The mid-point of the bid-ask price[41] at the close of trading (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Fund will also provide the Fund's prospectus, as well as the two most recent reports to stockholders. Finally, the Fund Web site will provide the last sale price of the Shares as traded in the U.S. market. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day. The Index value will be calculated daily using the daily LBMA Gold Price AM and the Spot Rate as of 9:00 a.m., London time. The Index value will be available from one or more major market data vendors and will be available during the Exchange's Core Trading Session.

Criteria for Initial and Continued Listing

The Fund will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the Sprott Physical Gold Trust, ETFS Trusts, streetTRACKS Gold Trust, the iShares COMEX Gold Trust, and the

[40] The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[41] The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

iShares Silver Trust. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered market makers in the Shares to facilitate surveillance. Rule 8.201(g) requires that a market maker in Commodity-Based Trust Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the market maker may have or over which it may exercise investment discretion. Such rule provides further that no market maker shall trade in an underlying commodity, or options on commodity futures, or any other related commodity derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by such rule. The Exchange proposes to amend Rule 8.201(g) to state that an ETP Holder acting as a registered market maker in Commodity-Based Trust Shares with no exposure to a non-U.S. currency or currencies must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the market maker may have or over which it may exercise investment discretion. An ETP Holder acting as a registered market maker in Commodity-Based Trust Shares with exposure to one or more non-U.S. currencies (''Underlying FX'') also must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading in Underlying FX and derivatives overlying Underlying FX which the market maker may have or over which it may exercise investment discretion, as well as a list of all commodity and commodity-related accounts referenced above. In addition, the proposed amended rule would state that no market maker in Commodity-Based Trust Shares shall trade in a commodity, Underlying FX or any related derivative in an account that the market maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange, and (3) has not reported to the Exchange. The last sentence of the first paragraph of Rule 8.201(g) is proposed to be deleted as unnecessary in view of the proposed amendment to such rule. The Exchange further proposes to amend the second paragraph of Rule 8.201(g), which relates to books, records or other information required to be made available to the Exchange, to add applicable Underlying FX and Underlying FX derivatives to the financial instruments that are subject to requirements of such rule.

Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered market maker in the Shares is required to provide the Exchange, upon request, with information relating to its trading in the underlying commodity (*e.g.,* gold), related futures or options on futures, or any other related commodity derivatives. The Exchange proposes to amend Rule 8.201(g) to add non-U.S. currency futures, options on non-U.S. currency futures and other related currency derivatives to the information that may be requested by the Exchange.

With respect to issues of Commodity-Based Trust Shares for which non-U.S. currency price changes may impact the NAV of the applicable shares, such as the Shares, the Exchange believes the proposed amendments to Rule 8.600(g) are appropriate in that a market maker may find it necessary to use non-U.S. currencies or currency derivatives to hedge positions in the underlying commodity. Therefore, to facilitate Exchange surveillance, any such non-U.S. currency-related trading activity should be in accounts reported to the Exchange, and books, records or other information related to such activity should be made available to the Exchange.

The Exchange notes that, under NYSE Arca Equities Rule 10.2, in the course of an investigation by the Exchange, the Exchange may request from ETP Holders documentary materials and other information, including trading records, regarding trading in currencies and currency derivatives. In addition, Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered market maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[42] The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above, or the Index value. If the interruption to the dissemination of the IIV or the Index value persists past the trading day in which it occurs, the

[42] *See* NYSE Arca Equities Rule 7.12.

Exchange will halt trading no later than the beginning of the trading day following the interruption.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[43] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[44]

Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered market makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Exchange Act.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[45] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Under NYSE Arca Equities Rule 10.2, in the course of an investigation by the Exchange, the Exchange may request from ETP Holders documentary materials and other information, including trading records, regarding trading in currencies and currency derivatives. With respect to issues of Commodity-Based Trust Shares for which non-U.S. currency price changes may impact the NAV of the applicable shares, such as the Shares, the Exchange believes the proposed amendments to Rule 8.600(g), as described above, are appropriate and in the public interest in that such amendments will facilitate Exchange surveillance of market makers' non-U.S.

[43] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[44] For a list of the current members of ISG, see *www.isgportal.org.*

[45] 15 U.S.C. 78f(b)(5).

currency-related trading activity. The last sentence of the first paragraph of Rule 8.201(g) is proposed to be deleted as unnecessary in view of the proposed amendment to such rule. The Exchange further proposes to amend the second paragraph of Rule 8.201(g), which relates to books, records or other information required to be made available to the Exchange, to add applicable Underlying FX and Underlying FX derivatives to the financial instruments that are subject to requirements of such rule. In addition, Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered market maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Fund's Web site will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information Web sites and other information service providers. The NAV of the Fund will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Fund's Web site. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk.* The Fund's Web site will also provide the Fund's prospectus, as well as the two most recent reports to stockholders. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing.

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 Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical gold.

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. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposed rule change to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[46] In particular, the Commission finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[47] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation, last-sale, trading volume, and closing price information for the Shares will be available over the Consolidated Tape.

Additionally, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[48] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately.

The Fund's Web site (*www.spdrgoldshares.com*) will provide an IIV per Share, updated every 15 seconds, during the Exchange's Core Trading Session. The Exchange states that the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Additionally, the Fund will publish on its Web site the Creation Basket Deposit and the NAV. [49] The Index value generally will be calculated daily, using the daily LBMA Gold Price AM and the Spot Rate as of 9:00 a.m., London time, and it will be available from one or more major market data vendors and will be available during the Exchange's Core Trading Session. The Exchange represents that the Index methodology is transparent, and that market makers will recalculate an approximate Index value using reliable intraday prices of gold and the relevant Index currencies to identify arbitrage opportunities that present themselves during the Exchange's Core Trading Session.[50] The

[46] In approving this 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).

[47] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[48] 15 U.S.C. 78f(b)(5).

[49] The Fund also will publish the following information on its Web site: (1) The mid-point of the Bid/Ask Price, and a calculation of the premium or discount of such price against such NAV; (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; (3) the Fund's prospectus, as well as the two most recent reports to stockholders; and (4) the last-sale price of the Shares as traded in the U.S. market.

[50] *See* Amendment No. 3, *supra* note 9, at 13. The Exchange states that there is a considerable amount of information about gold and currency prices available on public Web sites and through professional and subscription services. For example, according to the Exchange, investors may obtain on a 24-hour basis gold pricing information, as well as pricing information for the Reference

Continued

Reference Currency Index values, which impact the NAV of the Fund, generally would be calculated using the Spot Rate for each Reference Currency. According to the Exchange, each Spot Rate would be calculated using observable data from arms-length transactions ''where that data is available and reflects sufficient liquidity.'' [51] The Exchange represents that WMR utilizes the same methodology to calculate the Spot Rate as it does to calculate the NAV for certain issues of Currency Trust Shares, the listing and trading of which the Commission approved.[52] The Commission believes that the markets for the Reference Currencies (*i.e.,* the euro, Japanese yen, British pound sterling, Canadian dollar, Swedish krona and Swiss franc) and gold are deep and liquid. For these reasons, and in light of the Exchange's representations that the Index methodology is transparent,[53] the Commission presently has no reason to believe that the Index is susceptible to manipulation.

The Commission also believes that the proposal is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange may halt trading in the Shares because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable including: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Exchange will halt trading in the Shares if the NAV is not calculated or disseminated daily.[54] The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV or the Index value; if the interruption to the dissemination of the IIV or the Index value persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[55]

Further, the Commission believes that the Exchange's proposal to expand the scope of NYSE Arca Equities Rule 8.201(g) is designed to prevent manipulative acts and practices. As amended, the rule would allow the Exchange to better monitor the Reference Currency positions of market makers in the Shares to ensure that such market participants do not use their positions as market makers to violate the requirements of Exchange rules or applicable federal securities laws.[56]

In support of this proposal, the Exchange has made the following additional representations:

(1) The Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201.[57]

(2) The Exchange deems the Shares to be equity securities, and therefore the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

(3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[58]

(4) The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.[59]

(5) The Index Provider, which is not affiliated with a broker-dealer, has adopted policies and procedures designed to prevent the spread of material non-public information about the Index.[60]

(6) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[61]

(7) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[62]

(8) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin—the contents of which are discussed above—of the special characteristics and risks associated with trading the Shares.

(9) All statements and representations made in the proposed rule change regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange.[63]

(10) The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the NYSE Arca Equities Rule 5.5(m).[64]

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 3, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section

Currencies from various financial information service providers, such as Reuters and Bloomberg. *See id.* at 24.

[51] *See id.* at 44.

[52] *See* note 34, *supra.*

[53] *See* note 50, *supra,* and accompanying text.

[54] *See* Amendment No. 3, *supra* note 9, at 28.

[55] *See id.*

[56] The Commission notes that Commentary .04 of NYSE Arca Equities Rule 6.3 requires that an ETP Holder acting as a registered market maker in the Shares, and its affiliates, establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

[57] *See* Amendment No. 3, *supra* note 9, at 75.

[58] *See id.* at 68.

[59] *See id.* at 29.

[60] *See id.* at 9.

[61] *See id.* at 72. FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[62] *See id.* at 72–73.

[63] *See id.* at 29.

[64] *See id.* The Commission notes that certain other proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (Apr. 1, 2016), 81 FR 20428 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

6(b)(5) of the Exchange Act [65] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–84 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–2016–84. 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–NYSEArca–2016–84 and should be submitted on or before January 5, 2017.

[65] 15 U.S.C. 78f(b)(5).

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. In Amendment No. 3, the Exchange (among other things): (1) Provided additional information, which helped the Commission conclude that the Index is not susceptible to manipulation; and (2) expanded the scope of NYSE Arca Equities Rule 8.201(g) which, as discussed above, appropriately tailors the rule to accommodate the listing and trading of an issue of Commodity-Based Trust Shares that overlies both a commodity and currencies. Accordingly, Amendment No. 3 helped the Commission find that the proposed listing and trading of the Shares is consistent with the portion of Section 6(b)(5) of the Exchange Act,[66] which requires that the rules of a national securities exchange must be designed to, among other things, prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[67] to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[68] that the proposed rule change (SR–NYSEArca–2016–84), as modified by Amendment No. 3 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30081 Filed 12–14–16; 8:45 am]

BILLING CODE 8011–01–P

[66] 15 U.S.C. 78f(b)(5).

[67] 15 U.S.C. 78s(b)(2).

[68] *Id.*

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79514; File No. SR–CFE–2016–004]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing of a Proposed Rule Change Regarding Attempted Fraudulent Acts

December 9, 2016.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 2, 2016 CBOE Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'') [2] on December 1, 2016.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The Exchange proposes to amend CFE Rule 601 related to fraudulent acts. The scope of this filing is limited solely to the application of the rule amendments to security futures that may be traded on CFE. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE 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. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed CFE rule amendments included as part of this rule change is to amend CFE Rule 601 (Fraudulent Acts) to broaden the language of Rule 601 to also prohibit attempts to engage in any fraudulent act or scheme prohibited by Rule 601. The amendment to CFE Rule 601 is being made at the request of the CFTC. The rule amendments included as part of this rule change are to apply to all products traded on CFE, including both non-security futures and security futures.

CFE Rule 601 currently prohibits CFE Trading Privilege Holders and their related parties from engaging in any fraudulent act or in any scheme to defraud, deceive, or trick, in connection with or related to any trade on or other activity related to the Exchange or the clearing organization for the Exchange. Pursuant to CFE Rule 308, Rule 601 also applies to any person that initiates or executes a transaction on or subject to Exchange rules directly or through an intermediary and to any person for whose benefit such a transaction is initiated or executed.

The proposed rule change broadens the language of Rule 601 to also prohibit attempts to engage in any fraudulent act or any scheme prohibited by Rule 601.

This change is consistent with CFE Rule 604 (Adherence to Law) which prohibits conduct in violation of applicable law, including any provisions of the CEA and CFTC regulations which prohibit attempts to engage in fraudulent acts, such as CFTC Regulation 180.1[3] (Prohibition on the employment, or attempted employment, of manipulative and deceptive devices).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(5)[5] and 6(b)(7)[6] in particular in that it is designed:

- To prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade, and
- to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would strengthen its ability to carry out its responsibilities as a self-regulatory organization by providing further guidance with regard to attempted fraudulent acts by TPHs, their related parties, and others that access CFE's market. In particular, the proposed rule change makes it clear that attempts to engage in fraudulent acts are prohibited. The proposed rule change would also contribute to enhanced protection of CFE markets and market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, in that the rule change will enhance CFE's ability to carry out its responsibilities as a self-regulatory organization. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the amendments regarding attempted fraudulent acts or schemes apply equally to all market participants.

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

The proposed rule change will become operative on December 15, 2016. At any time within 60 days of the date of the filing by the Exchange of a written certification with the CFTC under Section 5c(c) of the CEA, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CFE–2016–004 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–CFE–2016–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CFE–2016–004, and should be submitted on or before January 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30078 Filed 12–14–16; 8:45 am]

BILLING CODE 8011–01–P

[3] 17 CFR 180.1.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79516; File No. SR–ICEEU–2016–014]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Clearing Rules Regarding German CDS Clearing Members

December 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2016, ICE Clear Europe Limited (''ICE Clear Europe'' or ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4)(i) [4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the changes is to modify the ICE Clear Europe Clearing Rules (''Clearing Rules'') to clarify the application of economic sanctions compliance provisions to German CDS Clearing Members, as described herein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the rule amendments is to modify the ICE Clear Europe Clearing Rules to revise the application of certain provisions related to economic sanctions compliance by CDS Clearing Members and Customers of CDS Clearing Members incorporated in Germany. The existing ICE Clear Europe Rules impose certain requirements on all Clearing Members with respect to compliance with economic sanctions regimes, specifically those imposed by the European Union, the United Kingdom, the United States and the United Nations Security Council. These requirements include representations by Clearing Members that they would not be prevented from entering into any cleared contract or from using the Clearing House under such sanctions regimes, and that they are in compliance with requirements under such regimes relating to due diligence in respect of their customers in any cleared transactions.

Clearing Members that are incorporated in Germany (''German Clearing Members'') have expressed concern to ICE Clear Europe that these requirements under the Rules may potentially be inconsistent with the anti-boycott provisions in Section 7 of the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) (the ''anti-boycott ordinance''), which generally prevents German persons from participating in so-called foreign boycotts. German Clearing Members have noted the view that contractual provisions that require them to comply with economic sanctions that are imposed by a jurisdiction other than Germany, the EU or the UN Security Council may, at least as a theoretical matter, conflict with the anti-boycott ordinance. This potential conflict may apply to sanctions imposed by the United States or the United Kingdom that are not also imposed by the EU or UN Security Council.

To avoid this potential conflict, ICE Clear Europe is proposing to amend its Clearing Rules to provide exceptions to certain of the representations and undertakings for German Clearing Members, to the extent the representation or undertaking would be in conflict with the anti-boycott ordinance. Instead, such German Clearing Members would be required to provide notice to the Clearing House at least 30 days in advance of any transaction (including a customer transaction) that would otherwise violate such a representation or undertaking. In such case, ICE Clear Europe would as an operational and compliance matter continue to evaluate whether the transaction or activity would be subject to or restricted under any applicable sanctions regime or restriction (including those of the United States and United Kingdom). If so, ICE Clear Europe would be entitled, as it determined to be appropriate, to use one of its existing authorities under the Clearing Rules, including potentially under Rules 104, 404 and Parts 2 and 6 depending on the circumstances, to avoid or decline to clear the transaction or impose a position limit preventing the transaction from being effective even if submitted. The amendments only relate to German Clearing Members that are CDS Clearing Members in connection with their CDS clearing activity; they do not apply to Clearing Members organized in other jurisdictions or to other products cleared by German Clearing Members.[5]

The changes are thus intended to avoid placing German CDS Clearing Members in a situation where they face a potential conflict between the Clearing Rules as they relate to non-German sanctions regimes and the anti-boycott ordinance, while at the same time allowing ICE Clear Europe itself to maintain compliance with all applicable sanctions regimes, including those of the United States and the United Kingdom. The making of these changes is regarded as important by German market participants particularly in relation to CDS clearing, which is subject to a clearing mandate under the European Market Infrastructure Regulation (EMIR),[6] effective from February 2017. The so-called ''frontloading window'' for mandatory clearing of CDS has already commenced and based on communications with Clearing Members, ICE Clear Europe understands that market participants regard it as important that there be certainty that CDS transactions executed today by German users, which will later be required to be cleared, can be capable of being cleared in compliance with applicable laws.

[5] Following prior consultations with Clearing Members, ICE Clear Europe is considering other potential changes to its Rules relating to sanctions. The proposed rule changes in this filing are intended to address only a specific issue identified by German Clearing Members.

[6] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as well as various implementing regulations and technical standards.

The proposed amendments to the Rules are described in more detail as follows:

In Rule 101, a new definition of ''Sanction'' has been added, which largely tracks existing references in the Rules to economic sanctions regulations and restrictions imposed by the EU, United Kingdom, United States or UN Security Council.

In Rule 201(a), which contains a representation that the Clearing Member will not be prevented from entering into a contract or using the Clearing House as a result of prohibition or restriction under an economic sanction regime, paragraph (xxxiv) has been amended to provide the exception described above for German CDS Clearing Members, solely in respect of their CDS business, and solely to the extent that the representation would conflict with applicable laws purporting to nullify or restrict the effect of foreign sanctions or preventing boycotts (the ''anti-boycott exception''). It has also been modified to use the new defined term Sanction.

In Rule 203(a), a new paragraph (xxi) has been added, which requires a German CDS Clearing Member (or any Clearing Member dealing with a customer incorporated in Germany) to provide at least 30 days' notice before entering into a transaction that would breach applicable representations or undertakings in the Rules relating to Sanctions, but for the anti-boycott exception.

Similar provisions have been added in new paragraphs (xiv) and (xv) of Rule 204(a), which requires Clearing Members to provide certain notices to the Clearing House. Paragraph (xiv) requires that a German CDS Clearing Member provide notice if any UK or US Sanctions would, if they were applicable, prevent the German CDS Clearing Member from entering into a cleared contract or using the Clearing House in circumstances in which neither EU Sanctions nor UN Security Council Sanctions would impose such restriction. Similarly, paragraph (xv) requires that a German CDS Clearing Member (or any Clearing Member for a customer incorporated in Germany) provide notice if U.K. or U.S. Sanctions would, if they were applicable, restrict or prevent any derivatives or spot trading activities involving the customer in circumstances in which neither EU Sanctions nor UN Security Council Sanctions would impose such restriction. Such notices must be given 30 days before entering into any such cleared contract.

Rule 405(a), which establishes certain representations deemed made by Clearing Members upon entering into a cleared contract, has been revised in paragraph (xi) to use the defined term Sanctions and include the anti-boycott exception discussed above.

In Rule 1901(d), which establishes requirements for being a Sponsored Principal, clause (xiii) has been revised (in a manner similar to the changes in Rule 201(a) above) to use the defined term Sanction and include the anti-boycott exception discussed above.

In addition, in the form of Standard Terms Annex for CDS transactions, paragraph 3(o), which includes representations by the customer about compliance with economic sanctions, has been revised to use the defined term Sanctions and include an anti-boycott exception applicable where the Clearing Member or Customer is located in Germany. The other Standard Terms Annexes for F&O and FX include only a conforming amendment to use the new defined term Sanction.

(b) Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act[7] and the regulations thereunder applicable to it, and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8] The amendments are intended to resolve a potential inconsistency for German Clearing Members between the provisions of the Rules relating to sanctions compliance and the German anti-boycott ordinance. Although certain responsibilities of German Clearing Members in this regard are being modified in light of the German anti-boycott ordinance, the amendments impose new notice requirements on such Clearing Members to facilitate the identification and review by the Clearing House of potential sanctions violations, which would entitle the Clearing House may [sic] take any appropriate action under the Rules, as discussed above. The amendments will thus facilitate continued compliance by ICE Clear Europe with sanctions regimes in all relevant jurisdictions. As such, ICE Clear Europe believes that the amendments will further the public interest in enforcement of such sanctions. By seeking to avoid a potential conflict with German law while maintaining overall compliance, the amendments will also further the development of a well-founded legal framework applicable to German Clearing Members (and their customers) in all relevant jurisdictions, within the meaning of Rule 17Ad–22(d)(1).[9] As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Section 17A of the Act.[10]

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. ICE Clear Europe is adopting amendments to the Clearing Rules intended to address certain potential compliance issues for German Clearing Members relating to different economic sanctions regimes. The amendments do not affect other Clearing Members, and are tailored to address a particular concern under the German anti-boycott ordinance that may affect the ability of German Clearing Members to comply with certain requirements under the Rules. ICE Clear Europe does not believe that these changes will impose any significant additional costs on Clearing Members or other market participants. ICE Clear Europe also does not believe the amendments will adversely affect access to clearing by Clearing Members or their customers or otherwise adversely affect Clearing Members or market participants.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe has previously conducted a public consultation with respect to a series of amendments relating to economic sanctions matters.[11] That consultation included a prior version of the provisions addressing the German anti-boycott ordinance issue that are the subject of this proposed rule change. Although a number of comments were received in that consultation generally (which ICE

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(d)(1). In this regard, ICE Clear Europe notes that as a clearing organization that provides services outside the United States, it is required to identify and address any material conflict of law issues, and be able to demonstrate that its rules and procedures are enforceable in all relevant jurisdictions. See 17 CFR 39.27(c); see also recently adopted Commission Rule 17Ad–22(e)(1) and related guidance in Exchange Act Release No. 34–78961 (Sept. 28, 2016).

[10] 15 U.S.C. 78q–1.

[11] See ICE Clear Europe Circular C16/099.

Clear Europe continues to consider), no material comments were received on the provisions relating to the German anti-boycott ordinance. ICE Clear Europe has commenced a further public consultation relating to the proposed changes to the Rules discussed here. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [12] of the Act and Rule 19b–4(f)(4)(i) [13] thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and does not significantly affect the respective rights or obligations of the clearing agency or persons using its clearing service, within the meaning of Rule 19b–4(f)(4)(i). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2016–014 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–ICEEU–2016–014. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings.*

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–ICEEU–2016–014 and should be submitted on or before January 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30080 Filed 12–14–16; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(4) [sic].

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79515; File No. SR–NYSE–2016–80]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.04 of the NYSE Listed Company Manual

December 9, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 30, 2016, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.04 of the NYSE Listed Company Manual (the ''Manual'') to adopt a fee discount for issuers that list 20 or more closed-end funds on the Exchange. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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 Section 902.04 of the Manual to adopt a fee discount for issuers that list 20 or more closed-end funds on the Exchange. The proposed new discount will take effect on January 1, 2017. Currently, fund families that list between three and 14 closed-end funds receive a 5% discount off the calculated Annual Fee for each fund listed, and those with 15 or more listed closed-end funds receive a discount of 15%.[4] Aggregate Annual Fees for any fund family are capped at $1,000,000 in any given year.

Currently, a small number of fund families benefit from the $1,000,000 fee cap. In most cases, fund families that benefit from the cap have a significant number of funds listed on the Exchange

[4] Closed-end funds are charged Annual Fees at a rate of $0.001025 per share.

and would otherwise have paid fees far in excess of $1,000,000. Therefore, the effective discount they receive to their uncapped fees typically exceeds 50%.

There are a number of other, smaller fund families that have 20 or more funds listed on the Exchange whose aggregate fees approach but do not exceed $1,000,000 and who therefore do not benefit from the cap. Consequently, those fund families pay fees at a far higher effective fee rate than is paid by those fund families whose fees are capped. The purpose of the proposed 50% discount is to significantly reduce this disparity.

The Exchange believes that a reduction in the effective fee rate paid by fund families that have 20 or more listed funds, but do not benefit from the cap, would create an incentive for them to initiate new funds, increasing competition in the industry. In particular, the Exchange believes that the proposed amendment may create an incentive for fund families to create a greater number of smaller funds than is currently the case, as smaller funds are particularly concerned about limiting their operating costs.

The Exchange believes that it is not unfairly discriminatory to provide a greater discount for fund families listing more than [sic] 20 funds than for smaller fund families, as a significant amount of the costs of conducting the Exchange's regulatory activities and providing client services with respect to a fund family are fixed costs and, consequently, the cost to the Exchange of servicing any incremental fund are smaller when that fund is part of a larger fund family than when it is part of a smaller fund family.

The Exchange does not believe that the proposed fee discount will have any effect on its ability to fund its regulatory activities.

The Exchange also proposes to amend Section 902.04 to remove obsolete references to fee levels that are no longer applicable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[5] in general, and furthers the objectives of Sections 6(b)(4)[6] of the Exchange Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, in particular in that it is designed 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.

The Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Exchange Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. In particular, the Exchange believes the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it would create an effective fee rate for a group of smaller fund families that is more consistent with the effective fee rate paid by larger fund families that benefit from the fee cap provision of the rule. The proposed amendment would also promote competition, as it would lower the costs of operating a fund for many issuers and will therefore incentivize those issuers to create new funds.

The Exchange believes that it is not unfairly discriminatory to provide a greater discount for fund families listing more than [sic] 20 funds than for smaller fund families, as a significant amount of the costs of conducting the Exchange's regulatory activities and providing client services with respect to a fund family are fixed costs and, consequently, the cost to the Exchange of servicing any incremental fund are smaller when that fund is part of a larger fund family than when it is part of a smaller fund family.

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 designed to provide a group of smaller issuers of closed-end funds with an effective fee rate that is closer to the effective rate charged to larger issuers that benefit from the rule's fee cap provision. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–80. This file

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 15 U.S.C. 78s(b)(2)(B).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–80, and should be submitted on or before January 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30079 Filed 12–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79523; File No. SR–BatsBZX–2016–84)

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 21.5 of Bats BZX Exchange, Inc. To Extend Through June 30, 2017, the Penny Pilot Program in Options Classes in Certain Issues

December 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2016, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to extend through June 30, 2017, the Penny Pilot Program (''Penny Pilot'') in options classes in certain issues (''Pilot Program'') previously approved by the Commission.[5] The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Penny Pilot, which was previously approved by the Commission, through June 30, 2017, and to provide revised dates for adding replacement issues to the Pilot Program. The Exchange proposes that any Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2017. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning June 1, 2016, and ending November 30, 2016).

The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to extend the Pilot Program prior to its expiration on December 31, 2016. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed in order to continue the Pilot Program, which is a

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The rules of BZX Options, including rules applicable to BZX Options' participation in the Penny Pilot, were approved on January 26, 2010. *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031). BZX Options commenced operations on February 26, 2010. The Penny Pilot was most recently extended for BZX Options through December 31, 2016. *See* Securities Exchange Act Release No. 78032 (June 10, 2016), 81 FR 39307 (June 16, 2016) (SR–BatsBZX–2016–23).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

competitive response to analogous programs offered by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f)(6) of Rule 19b–4 thereunder,[9] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsBZX–2016–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBZX–2016–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2016–84 and should be submitted on or before January 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30095 Filed 12–14–16; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79520; File No. SR–CBOE–2016–071]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating To Opening and Closing Rotations Under the HOSS System

December 9, 2016.

I. Introduction

On October 7, 2016, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to the opening of series for trading on the Exchange. The Commission published the proposed rule change for comment in the **Federal Register** on October 27, 2016.[3] On November 18, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order provides notice of filing of Amendment No. 1 and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

CBOE proposes to amend its rules relating to the opening of series for trading on the Exchange. Rule 6.2B describes the process (referred to as ''HOSS'') that the Exchange's Hybrid Trading System (the ''System'') uses to open series on the Exchange each trading day. The Exchange may also use HOSS for closing series or opening

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79133 (October 21, 2016), 81 FR 74828 (October 27, 2016) (''Notice'').

[4] In Amendment No. 1, the Exchange updated a cross-reference to Rule 6.2B in Rule 6.13. To promote transparency of its proposed amendment, when CBOE filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR–CBOE–2016–071 (available at *https://www.sec.gov/comments/sr-cboe-2016-071/cboe2016071.shtml*). The Exchange also posted a copy of its Amendment No. 1 on its Web site (*http://www.cboe.com/aboutcboe/legal/submittedsecfilings.aspx*), when it filed it with the Commission.

series after a trading halt. The Exchange is proposing various changes to reorganize and simplify the rule and to more accurately reflect current System functionality.[5]

According to the Exchange, HOSS generally processes the opening of each series in four stages: [6]

(1) *Pre-Opening Period:* During the pre-opening period, the System accepts orders and quotes and disseminates 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 (collectively, ''expected opening information'' or ''EOIs'').

(2) *Initiation of the Opening Rotation:* The System then 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 to establish an opening Exchange best bid and offer (''BBO'') and trade price for each series while continuing to disseminate EOIs.

(4) *Opening of Trading:* The System then opens series for trading, subject to the satisfaction of certain conditions.

According to CBOE, the proposed rule change is designed to more clearly organize Rule 6.2B in this sequential order and makes the additional specific changes discussed in more detail below.

Pre-Opening Period

Rule 6.2B(a) currently provides that the System accepts orders and quotes, 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.,[7] and for extended trading hours, for a period of time prior to 2:00 a.m.[8] The Exchange proposes to amend Rule 6.2B(a) to provide that, for each trading session, the pre-opening period will begin no later than 15 minutes prior to the expected initiation of an opening rotation and 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.[9]

Under the proposal, the Exchange generally will not restrict the size or origin code of orders that may be submitted during the pre-opening period. Therefore, the proposed rule change amends Rule 6.2B(a)(i) to add certainty to the rule by deleting the provision that requires the Exchange to designate—on a class-by-class basis—the eligible order size, eligible order type, and eligible order origin code (*i.e.,* public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders) which the System will accept.[10] Additionally, the proposed rule change clarifies that the System will accept all quotes and all order types during the pre-opening period except for immediate-or-cancel, fill-or-kill, intermarket sweep orders, and Market-Maker trade prevention orders.[11] The proposed rule change also adds that if an order entered during the pre-opening period for regular trading hours is not eligible for book entry (*e.g.,* minimum volume, not held, and market-if-touched orders), the System will route the order via CBOE's order handling system pursuant to Rule 6.12.[12]

The proposed rule change amends Rule 6.2B(a)(ii) in several ways. First, it defines EOIs and specifies the timing of their dissemination. EOIs contain information based on resting orders and quotes in the Book, including the EOP, the EOS, any reason why a series may not open pursuant to paragraph (d) of Rule 6.2B,[13] and any imbalance information, including the size and side of the imbalance. EOIs will be disseminated to all market participants that have elected to receive them beginning at a time determined by the Exchange, which will be no earlier than three hours prior to the expected initiation of an opening rotation for a series. The System will then disseminate EOI at regular intervals of time, or less frequently if there are no updates since the previously disseminated EOI.[14]

The proposed rule change further modifies Rule 6.2B(a)(ii) to redefine the terms EOP and EOS and address when that information will be disseminated. 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 provides that an EOP will 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 that the EOP is the price at which any opening trade is expected to execute and adds that the EOS is the size of any expected opening trade. The proposed rule change further 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'') [15] 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'').[16]

Opening Rotation Initiation and Notice

Rule 6.2B(b) currently provides that, 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 [17] (or after 8:30 a.m. 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

[5] *See* Notice, *supra* note 3, at 74829.

[6] *See id.*

[7] All times set forth in Rule 6.2B are central time. *See id.* at 74829, n.3.

[8] The precise time periods are determined by the Exchange on a class-by-class basis. *See id.* at 74829. In addition, since 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 (''ETPs'')), the proposed rule change deletes the provision of the current rule that says the Exchange will determine the time on a class-by-class basis. *See id.*

[9] The Exchange notes that the pre-opening period currently 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. *See id.* at 74829, n.4.

[10] *See* Notice, *supra* note 3, at 74829.

[11] *See id.* at 74829–30 for a discussion of these order types, which are defined in Rule 6.53.

[12] *See id.* at 74830. The Exchange notes that orders not eligible for book entry may only be traded open outcry on the Exchange floor. According to the Exchange, because only electronic trading is permitted during extended trading hours, the System will not accept these orders during the extended hours trading session and therefore, this proposed provision is not applicable during that trading session. *See id.* at 74830, n.6.

[13] Proposed paragraph (d) of Rule 6.2B sets forth certain Opening Conditions, which are discussed in greater detail below.

[14] *See* Notice, *supra* note 3, at 74830.

[15] 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.

[16] *See* Notice, *supra* note 3, at 74830, for more detailed discussion of these changes to the pre-opening period.

[17] 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. Since the Exchange does not designate the primary volume market as the market for the underlying security for any class, the proposed rule change deletes that option. The proposed rule change also changes the term ''market'' to ''exchange'' and clarifies that the Exchange determines on a class-by-class basis which market is the market for the underlying security. *See* Notice, *supra* note 3, at 74830, n.10.

procedure and sends a notice (''Rotation Notice'') to market participants.[18]

The Exchange proposes to amend Rule 6.2B(b) to provide that the System will initiate the opening rotation procedure and send out a Rotation Notice on a class-by-class basis as follows:

- 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.[19]

Opening Rotation Period

Rule 6.2B(c) provides that after the Rotation Notice is sent, the System enters into a rotation period, during which the opening price is established for each series. The proposed rule change reorganizes paragraph (c) to more clearly demarcate and further describe (1) when the opening rotation period begins, (2) what happens during the period, (3) the handling of EOIs during the period, and (4) when the period ends.[20]

During the opening rotation period, the System establishes the opening trade price and the opening BBO by matching and executing resting orders and quotes against each other. The proposed rule change modifies 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.[21] The proposed rule change also states that 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. The Exchange notes that Contingency Orders that participate in the opening rotation may execute during the opening rotation period only if their contingencies are triggered.[22]

The proposed rule change clarifies that the System will continue to disseminate EOIs (not just the EOP and EOS) during the opening rotation period, which may be disseminated at more frequent intervals closer to the opening.[23] In addition, the proposed rule change updates the description of the length of the opening rotation period and adds detail to the description of how the System processes series to open following the opening rotation period. Specifically, current subparagraph (c)(ii) states that 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.[24] Proposed subparagraph (c)(iii) retains that process, but clarifies that CBOE will determine the length and number of these intervals for all classes.[25]

Opening Quote and Trade Price

In its filing, the Exchange represented that, pursuant to the Options Price Reporting Authority (''OPRA'') Plan, once a series opens, the System disseminates all quote and trade price information to OPRA, including opening quote and trade price information.[26] Accordingly, the Exchange proposes to delete text in current paragraph (d) of Rule 6.2B stating that the opening price is determined by series and that CBOE disseminates opening quote and trade information through OPRA because the Exchange already disseminates such information pursuant to the OPRA Plan, and therefore believes that this provision is unnecessarily repetitive.[27] Despite the deletion of that language from the rule concerning reporting data through OPRA, the Exchange is not proposing a substantive change to reporting this information through OPRA.

Opening Conditions

Current Rule 6.2B(e) provides that the System will not open a series if one of a number of specified conditions is met, including the absence of a quote that complies with the bid/ask differential requirements or if the opening price would not be within an acceptable range or would leave a market order imbalance.[28] The proposed rule change amends these conditions to provide that, in classes in which the Exchange has *not* activated HALO:

(1) If there are no quotes in the series on the Exchange, the System will not open the series;

(2) if the width between the Exchange's best quote bid and best quote offer 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'') [29] and there are orders or quotes marketable against each other, the System will not open the series. However, if the opening quote width is no wider than the intraday acceptable price range for the series (''IEPW range'') [30] and there are no orders or quotes marketable against each other, the System will open the series. If the opening quote width is wider than the IEPW range, the System will not open the series. Additionally, according to

[18] *See id.* at 74830–31.

[19] *See id.* at 74831 (providing detailed description of the Exchange's changes to initiating the opening rotation).

[20] *See* proposed Rule 6.2B(c). *See also* Notice, *supra* note 3, at 74831.

[21] *See* Notice, *supra* note 3, at 74831. If there are multiple prices at which the same number of contracts would clear, the System will use (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. *See id.*

[22] *See id.* at 74831–32. Further, the Exchange notes that 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). 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. *See id.* at 74832, n.13.

[23] *See id.* at 74832.

[24] *See id.* at 74832.

[25] According to the Exchange, currently, the Exchange has set the period of time that must pass before the System begins 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. *See* Regulatory Circular RG11–072; *see also* Notice, *supra* note 3, at 74832 n.14.

[26] *See* Notice, *supra* note 3, at 74832.

[27] *See id.* at 74832.

[28] *See id.* at 74832. 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. In this case, 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). *See id.* at n.16.

[29] Current OEPW settings are set forth in Regulatory Circular RG 13–025. *See* Notice, *supra* note 3, at 74832, n.18.

[30] *See* Rule 6.13(b)(v).

the Exchange, because all quotes entered by Market-Makers (including quotes entered during the pre-opening period and opening rotation period) must satisfy bid/ask differentials,[31] the Exchange proposes to delete the reference to bid/ask differential requirements in this provision;

(3) if the opening trade price would be outside of the OEPW range, the System will not open the series. The Exchange states that the proposed rule change also deletes the language from the current provision regarding sending a notification when this condition is present because notifications are sent when a series does not open for any reason; or

(4) if the opening trade would leave a market order imbalance, the System will 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 will open the series; if there is no bid in the series and the best offer is greater than $0.50, the System will not open the series. The proposed rule change deletes the language regarding the exception for series that will open at a minimum increment.[32] The proposed rule change also deletes the language from the current provision regarding sending a notification when this condition is present, because, as stated above, notifications go out when a series does not open for any reason.[33]

Separately, current Interpretation and Policy .03 to Rule 6.2B describes opening conditions that apply to classes in which the Exchange *has* activated HALO.[34] Among other things, the current conditions take into consideration whether the opening trade would be at a price that is not the national best bid or offer.[35] Current Interpretation and Policy .03(b) further describes what happens when each of these conditions is present, including exposure of marketable orders at the NBBO under certain conditions. The proposed rule change would amend the opening conditions applicable to classes in which the Exchange *has* activated HALO to provide as follows:

(1) If there are no quotes on the Exchange or disseminated from at least one away exchange present in the series, the System will not open the series;

(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, 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 will 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 will open the series. If the opening quote width is wider than the IEPW range, the System will 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 will open the series by matching orders and quotes to the extent they can trade and will report the opening trade, if any, at the opening trade price. The System will 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).[36]

(3) if the opening trade price would be outside the OEPW range or the NBBO, the System will open the series by matching orders and quotes to the extent they can trade and will report the opening trade, if any, at an opening trade price not outside either the OEPW range or NBBO. The System will then expose any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher);

(4) if the opening trade would leave a market order imbalance, the System will open the series by matching orders and quotes to the extent they can trade and will report the opening trade, if any, at the opening trade price. The System will then expose any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher); 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 will not open the series.[37] 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 will 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.[38]

In addition, the proposed rule change makes other changes to current Interpretation and Policy .03, while retaining and moving around certain other provisions.[39] Among other things, for example, because the Exchange no longer uses an allocation period, it proposes to delete the provision regarding the allocation period of the HAL openings.[40] In addition, 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

[31] *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. *See* Notice, *supra* note 3, at 74833, n.20.

[32] 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. *See* Notice, *supra* note 3, at 74833.

[33] *See* Notice, *supra* note 3, at 74832–33 (describing in greater detail opening conditions set forth in proposed Rule 6.2B(d)(i)).

[34] *See id.* at 74833–34 (providing a detailed description of the current opening conditions that apply to classes in which HALO is activated). The Exchange proposes to reorganize Rule 6.2B to keep the description of the applicable opening conditions for all classes in a single location within the rules. Therefore, the proposed rule change moves these opening conditions to proposed subparagraph (d)(ii) of Rule 6.2B. *See id.* at 74834, n.23.

[35] *See id.* at 74833.

[36] Additionally, according to the Exchange, because all quotes entered by Market-Makers (including quotes entered during the pre-opening period and opening rotation period) must satisfy bid/ask differentials, the Exchange proposes to delete the reference to bid/ask differential requirements from Rule 6.2B. *See id.* at 74834, n.24 and accompanying text.

[37] 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. *See id.* at 74835, n.26.

[38] *See id.* at 74834–35.

[39] The proposed rule change stipulates that 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. *See* Notice, *supra* note 3, at 74835, n.27.

[40] *See id.* at 74835.

for openings, as it is the same as the priority in proposed subparagraph (c)(i)(C).[41]

The Exchange also proposes to add subparagraph (d)(iii), which provides that 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) 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).[42]

Hybrid 3.0 Classes

The proposed rule change moves Rule 6.2B, Interpretation and Policy .01(a), which establishes a modified opening procedure for classes that trade on the Hybrid 3.0 platform, into the body of the rule in proposed paragraph (h). Interpretation and Policy .01 generally describes the modified opening procedures for Hybrid 3.0 series that are used to calculate volatility indexes.[43] The Exchange noted in its filing that 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.[44] The proposed rule change therefore moves this provision to proposed paragraph (h) within the body of the rule, rather than the Interpretation and Policy.

The introduction to proposed paragraph (h) states that all the provisions set forth in Rule 6.2B apply to the opening of Hybrid 3.0 series except as follows in subparagraphs (i) and (ii). Proposed paragraph (h)(i) provides that 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. Proposed paragraph (h)(ii) states that during the pre-opening period, the System will accept all order types eligible for entry from public customers (consistent with current paragraph (a) in Interpretation and Policy .01), but adds that the System only accepts opening rotation orders from non-public customers.[45]

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. Current Interpretation and Policy .01(b) requires the DPM or LMM to enter opening quotes in all series in a Hybrid 3.0 class during a modified opening procedure. 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.[46]

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.[47] The introductory paragraph of current paragraph (c) states that 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 Exchange states that the proposed introductory paragraph to Interpretation and Policy .01 simplifies these two sentences, which CBOE believes are redundant, and states that on the dates on which the exercise and final settlement values are calculated for options[48] 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).[49]

Current Interpretation and Policy .01(c)(i) states that all orders, other than spread or non-OPG 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. Since the Exchange permits the same order types during the modified opening procedure as it does during the standard procedure, the proposed rule change deletes this paragraph.[50]

Exchange Determinations

Current Rule 6.2B provides in various places, including paragraphs (b)(ii), (e) and (f) and Interpretations and Policies .01 and .08, that Exchange Floor Officials 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 that senior Help Desk personnel make these determinations.[51] The proposed

[41] *See id.*

[42] Current Rule 6.2B(h) and proposed Rule 6.2B(g) provide that 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 non-substantive 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. *See id.* at 74835, n.28.

[43] The only series trading on Hybrid 3.0 are SPX index options. *See, e.g.,* CBOE FAQs, *available at: https://www.cboe.org/publish/mmfaq/mmfaq.pdf* (''All option classes on CBOE are Hybrid classes, except SPX, which contains both Hybrid series (SPX Weeklys under trading symbol SPXW) and Hybrid 3.0 series (all other SPX series under trading symbol SPX).'').

[44] *See* Notice, *supra* note 3, at 74835–36.

[45] *See id.* at 74836. 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. *See id.* at 74836, n.31.

[46] *See id.* at 74836.

[47] 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 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. *See id.* at 74836, n.34.

[48] The proposed rule references Rules 24.9(a)(5) and (6) (which references are also 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. *See id.* at 74836, n.35.

[49] *See id.* at 74836.

[50] *See* Notice, *supra* note 3, at 74836–37. 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 on all trading days. *See id.* at 74832.

[51] Current paragraph (b)(ii) references the Exchange Control Room. The Control Room is now

rule change lists examples of actions Senior Help Desk personnel may take in the interests of commencing or maintaining a fair and orderly market, 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 that 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.[52]

In addition, 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,[53] 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 that, 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 that it will announce via Regulatory Circular with appropriate advance 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.[54]

Obsolete and Duplicate Language

The proposed rule change proposes to delete certain provisions because it believes the language is obsolete or duplicative. Those changes include the following:

- 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 that the Exchange may consider such information when deciding whether to open a series despite the delay in the opening of the underlying. According to CBOE, the CBOE Help Desk generally is aware of delayed openings in the underlying securities and thus this provision is no longer necessary. Additionally, the Exchange's Help Desk would have the ability to compel the opening of a series pursuant to proposed Rule 6.2B(f) and therefore proposes to delete this provision.[55]
- 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. Since the System will cancel opening rotation orders that do not execute during the opening rotation of a series, the Exchange believes 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 applies Interpretation and Policy .01 (as amended by this proposed rule change) to all classes.[56]

Non-Substantive Changes

The proposed rule change, as modified by Amendment No. 1, makes numerous non-substantive and clerical changes throughout Rule 6.2B and in Rules 6.1A(e)(iii)(C), 6.13(b)(v)(B)(V), 6.53(l), 8.15(b)(v), 8.85(a)(xi), and 17.50(g)(14), including adding or amending headings and defined terms, updating cross-references, adding introductory and clarifying language, using consistent language and punctuation, and replacing terms such as ''option series'' with series.[57] The proposed rule change also amends current Rule 6.2B(g) and proposed Rule 6.2B(f) to clarify that the procedure described in Rule 6.2B may be used to reopen a series, in addition to a class, after a trading halt to address a potential situation in which only certain series are subjected to halt. The proposed rule change also adds detail regarding notice of use of this opening procedure following a trading halt and clarifies that the procedure would be the same, though depending on facts and circumstances, there may be no pre-opening period or a shorter pre-opening period. Proposed paragraph (f) further 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.[58]

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 default algorithm during rotations, but leaves the Exchange flexibility to apply a different algorithm to a class during rotations if it deems necessary or appropriate.[59]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act,[60] and the rules and regulations thereunder applicable to a national securities exchange.[61] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[62] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

referred to as the Help Desk, so the Exchange proposes to delete the references to the Control Room. *See id.* at 74837, n.37.

[52] *See id.* at 74837.

[53] Rule 8.14, Interpretation and Policy .01, provides that 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. *See id.* at 74838, n.39.

[54] *See id.* at 74838.

[55] *See id.* at 74837.

[56] *See* Notice, *supra* note 3, at 74838. The proposed rule change deletes references to VXST, the CBOE Short-Term Volatility Index, in Interpretation and Policy .01, as VXST is only one type of volatility index and is not unique in its treatment under this rule. *See id.* at n.38.

[57] The Exchange notes that all series listed for trading on the Exchange are for options, therefore it does not believe that including the word ''option'' is necessary. *See id.* at 74838.

[58] *See id.* at 74838. CBOE also notes that 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. *See id.* at n.40.

[59] *See id.* at 74838.

[60] 15 U.S.C. 78f.

[61] In approving this 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).

[62] 15 U.S.C. 78f(b)(5).

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.

In particular, the proposed rule change reorganizes and attempts to clarify the description of the opening (and sometimes closing) procedures, deletes text that the Exchange believes is either obsolete or unnecessary, removes certain discretion for the Exchange to make determinations under the rule on a class-by-class basis where CBOE no longer needs that discretion, and is intended to promote greater consistency across Rule 6.2B. The Commission notes that these changes may offer market participants a better understanding of how the Exchange's opening (and sometimes closing) procedures operate. To the extent the changes achieve that goal, they may promote transparency, reduce the potential for investor confusion, and assist market participants in deciding whether to participate in CBOE's trading rotations and, if they do participate, have confidence and certainty as to how their orders will be processed by the CBOE System.

The Commission believes that the proposed rule change is designed to promote just and equitable principles of trade by seeking to ensure that series open in a fair and orderly manner with sufficient liquidity and opportunities for execution at prices that are determined by market forces. In particular, the Exchange notes that the proposed rule change is designed to ensure that market participants are aware of the circumstances under which the System may not open a series.[63] Further, although the proposed rule change deletes the obligation for LMMs in Hybrid 3.0 classes to enter opening orders and quotes on volatility settlement dates, the Exchange has represented that it does not believe that this change will impact the balance of LMM obligations and benefits, as this obligation has been applied only to a brief period of time on a limited number of days.[64] In addition, 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.[65] The Exchange believes that 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.[66] Thus, CBOE does not believe it is necessary to impose additional opening quoting obligations on LMMs on those days.

Further, the proposed change more clearly specifies the situations in which the modified opening procedures replace the opening procedures on settlement dates for certain series. The proposed rule change also sets out the circumstances when the Exchange may exercise discretion and strives to narrow that discretion within certain established parameters.[67] The proposed rule change further requires the Exchange to document and periodically review Exchange decisions made under the rule, including any deviations from the standard opening procedures, and specifies that only senior Exchange officials can make those determinations and must do so in limited specified circumstances with specific regard to the public interest.[68] In this manner, Exchange determinations made under the rule should be transparent and made with due regard to the Exchange's obligations under the Act.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–071 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 January 5, 2017.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register.** In Amendment No. 1,[69] CBOE updated a cross-reference to Rule 6.2B in Rule 6.13. This change is consistent with the proposal as initially filed, and corrects

[63] *See* Notice, *supra* note 3, at 74839.

[64] *See id.*

[65] *See id.*

[66] *See id.*

[67] Exchange determinations, including the establishment of parameters governing the opening process, will be set forth in Regulatory Circulars (or as otherwise specified by the Exchange under the proposed rule). On account of the critical importance of this information to investors' understanding of how the Exchange's System operates, CBOE should ensure that such information is prominently displayed, readily searchable and retrievable, up-to-date, and comprehensive.

[68] *See* proposed Rule 6.2B(e). *See also* Notice, *supra* note 3, at 74837.

[69] *See* Amendment No. 1, *supra* note 4.

a now-obsolete rule reference. The change does not introduce material, new, or novel concepts. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[70] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[71] that the proposed rule change (SR–CBOE–2016–071), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30082 Filed 12–14–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9818]

Modification of Iran, North Korea, and Syria Nonproliferation Act Measures Against a Russian Entity

SUMMARY: A decision has been made, pursuant to the Iran, North Korea, and Syria Nonproliferation Act, to modify nonproliferation measures pursuant to this Act on a Russian foreign person.

DATES: *Effective Date:* December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Jeffrey G. McCoy, Office of Euro-Atlantic Security Affairs, Bureau of Arms Control, Verification and Compliance, Department of State, Telephone (202) 647–4940.

SUPPLEMENTARY INFORMATION: On September 2, 2015, the United States Government published a notice announcing the imposition of measures including the following against Rosoboronexport (ROE) (Russia) and any successor, sub-unit, or subsidiary thereof: ''No department or agency of the United States Government may procure or enter into any contract for the procurement of any goods, technology, or services from Rosoboronexport (ROE) (Russia) and any successor, sub-unit, or subsidiary thereof, except to the extent that the Secretary of State otherwise may determine. . . .'' (See 80 FR 53222, Public Notice 9251; 80 FR 65844, Public Notice 9329; and 80 FR 73865, Public Notice 9358).

On July 5, 2016, the United States Government published a notice announcing the imposition of measures including the following against Rosoboronexport (ROE) (Russia) and any successor, sub-unit, or subsidiary thereof: ''No department or agency of the United States Government may procure or enter into any contract for the procurement of any goods, technology, or services from Rosoboronexport (ROE) (Russia) and any successor, sub-unit, or subsidiary thereof, except to the extent that the Secretary of State otherwise may determine. . . .'' (See 81 FR 43696, Public Notice 9624).

The United States Government has decided to modify the measures described above against ROE and any successor, sub-unit, or subsidiary thereof as follows: The measures described above shall not apply to United States Government procurement of goods, technology, and services for the purchase, maintenance or sustainment of the Digital Electro Optical Sensor OSDCAM4060, to improve the U.S. ability to monitor and verify Russia's Open Skies Treaty compliance.

Such subcontracts include the purchase of spare parts, supplies, and related services.

This modification does not apply to any other measures imposed pursuant to the INKSNA and announced in Public Notice 9251 published on September 2, 2015 (80 FR 53222) or Public Notice 9624 published on July 5, 2016 (81 FR 43696).

Frank Rose,

Assistant Secretary, Bureau of Arms Control, Verification and Compliance, Department of State.

[FR Doc. 2016–30158 Filed 12–14–16; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0118]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 14, 2016, The Beltway Railway of Chicago (BRC) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA–2016–0118. BRC seeks relief from the requirements of 49 CFR 236.109 Time releases, timing relays and timing devices. BRC requests relief from § 236.109 as it applies to variable timers within the program logic of the operating software of microprocessor-based equipment.

BRC states that timing devices contained within microprocessor-based equipment are typically non-variable and are within the program logic of the operating software. BRC notes, however, that some microprocessor-based equipment have variable timers. BRC is requesting relief from the requirement of checking the actual time interval of microprocessor-based variable timers. Such variable timers will use verification of the CRC/Check Sum/UCN of the existing location specific application logic to the previously tested version. A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the 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, US 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 January 30, 2017 will be considered by FRA before final action is taken. Comments

[70] 15 U.S.C. 78s(b)(2).

[71] 15 U.S.C. 78s(b)(2).

[72] 17 CFR 200.30–3(a)(12).

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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *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. 2016–30142 Filed 12–14–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0115]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 28, 2016, CSX Transportation (CSX) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA–2016–0115.

CSX seeks relief from the requirements of 49 CFR 236.566, *Locomotive of each train operating in train stop, train control or cab signal territory; equipped.* Specifically, CSX seeks relief for the following locations and operations:

1. Operations from Control Point (CP) 45 at Milepost (MP) OB44.5 on the Boston Subdivision, Albany Division, near Worcester, MA, to CP 92 at MP OB92.0 on the Berkshire Subdivision, Albany Division, near Springfield, MA, for the following operations with the condition that an absolute block be established in advance of each movement:

a. Engines used in switching and transfer service, with or without cars; work trains; wreck trains; ballast cleaners to and from work; engines and rail diesel cars moving to and from shops. All movements must operate at restricted speed, not exceeding 15 mph.

2. Operations from CP 92 at MP OB92.0 on the Berkshire Subdivision, Albany Division, near Springfield, MA, to CP 187 at MP OB187.4 on the Berkshire Subdivision, Albany Division, near Albany, NY.:

a. Engines used in switching and transfer service, with or without cars; Work trains; Wreck trains; Ballast Cleaners to and from work; Engines and Rail Diesel Cars moving to and from shops. All movements must operate at Restricted Speed, not exceeding 15 mph.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *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 January 30, 2017 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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*. See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–30140 Filed 12–14–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0116]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 28, 2016, CSX Transportation (CSX) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition docket number FRA–2016–0116.

CSX seeks relief from the requirements of 49 CFR 236.60, *Switch Shunting Circuit; Use Restricted,* which prohibits the use of a switch shunting circuit as the only method of protection for inside switches or fouling point derails located on non-signaled track leading to a signaled track where the FRA does not require any such installation of a circuit controller. CSX is requesting this relief system-wide.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the 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 January 30, 2017 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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *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. 2016–30139 Filed 12–14–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Development Community Financial Institutions Fund

Funding Opportunity

Funding Opportunity Title: Notice of Guarantee Availability (NOGA) inviting Qualified Issuer Applications and Guarantee Applications for the Community Development Financial Institutions (CDFI) Bond Guarantee Program.

Announcement Type: Announcement of opportunity to submit Qualified Issuer Applications and Guarantee Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.011.

Key Dates: Qualified Issuer Applications and Guarantee Applications may be submitted to the CDFI Fund starting on the date of publication of this NOGA. In order to be considered for the issuance of a Guarantee in FY 2017, Qualified Issuer Applications must be submitted by March 3, 2017 and Guarantee Applications must be submitted by March 17, 2017. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 5:00 p.m. ET, March 3, 2017. Under FY 2017 authority, which is contingent upon Congressional authorization, Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by September 30, 2017.

Executive Summary: This NOGA is published in connection with the CDFI Bond Guarantee Program, administered by the Community Development Financial Institutions Fund (CDFI Fund), the U.S. Department of the Treasury (Treasury). Through this NOGA, the CDFI Fund announces the availability of up to $1 billion of Guarantee Authority in FY 2017, contingent upon Congressional authorization. This NOGA explains application submission and evaluation requirements and processes, and provides agency contacts and information on CDFI Bond Guarantee Program outreach. Parties interested in being approved for a Guarantee under the CDFI Bond Guarantee Program must submit Qualified Issuer Applications and Guarantee Applications for consideration in accordance with this NOGA. Capitalized terms used in this NOGA and not defined elsewhere are defined in the CDFI Bond Guarantee Program regulations (12 CFR 1808.102) and the CDFI Program regulations (12 CFR 1805.104).

I. Guarantee Opportunity Description

A. *Authority.* The CDFI Bond Guarantee Program was authorized by the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a) (the Act). Section 1134 of the Act amended the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701, *et seq.*) to provide authority to the Secretary of the Treasury (Secretary) to establish and administer the CDFI Bond Guarantee Program.

B. *Bond Issue size; Amount of Guarantee authority.* In FY 2017, the Secretary may guarantee Bond Issues having a minimum Guarantee of $100 million each, up to an aggregate total of $1 billion, contingent upon Congressional authorization.

C. *Program summary.* The purpose of the CDFI Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued for Eligible Community or Economic Development Purposes, as authorized by section 1134 and 1703 of the Act. The Secretary, as the Guarantor of the Bonds, will provide a 100 percent Guarantee for the repayment of the Verifiable Losses of Principal, Interest, and Call Premium of Bonds issued by Qualified Issuers. Qualified Issuers, approved by the CDFI Fund, will issue Bonds that will be purchased by the Federal Financing Bank. The Qualified Issuer will use 100 percent of Bond Proceeds to provide Bond Loans to Eligible CDFIs, which will use Bond Loan proceeds for Eligible Community and Economic Development Purposes, including providing Secondary Loans to Secondary Borrowers.

D. *Review of Guarantee Applications, in general.*

1. Qualified Issuer Applications submitted with Guarantee Applications will have priority for review over Qualified Issuer Applications submitted without Guarantee Applications. With the exception of the aforementioned prioritized review, all Qualified Issuer Applications and Guarantee Applications will be reviewed by the CDFI Fund on an ongoing basis, in the order in which they are received, or by such other criteria that the CDFI Fund may establish in its sole discretion.

2. Guarantee Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to move the Guarantee Application to the next phase of review. Submitting an incomplete Guarantee Application earlier than other applicants does not ensure first approval.

3. Qualified Issuer Applications and Guarantee Applications that were received in FY 2016 and that were neither withdrawn nor declined in FY 2016 will be considered under FY 2017 authority.

4. Pursuant to the Regulations at 12 CFR 1808.504(c), the Guarantor may limit the number of Guarantees issued

per year or the number of Guarantee Applications accepted to ensure that a sufficient examination of Guarantee Applications is conducted.

E. *Additional reference documents.* In addition to this NOGA, the CDFI Fund encourages interested parties to review the following documents, which have been posted on the CDFI Bond Guarantee Program page of the CDFI Fund's Web site at *http://www.cdfifund.gov/bond.*

1. CDFI Bond Guarantee Program Regulations. The regulations that govern the CDFI Bond Guarantee Program were published on February 5, 2013 (78 FR 8296; 12 CFR part 1808) (the Regulations) and provide the regulatory requirements and parameters for CDFI Bond Guarantee Program implementation and administration including general provisions, eligibility, eligible activities, applications for Guarantee and Qualified Issuer, evaluation and selection, terms and conditions of the Guarantee, Bonds, Bond Loans, and Secondary Loans.

2. Application materials. Details regarding Qualified Issuer Application and Guarantee Application content requirements are found in this NOGA and the respective application materials.

3. Program documentation. Interested parties should review template for the Bond Documents and Bond Loan documents that will be used in connection with each Guarantee. The template documents are posted on the CDFI Fund's Web site for review. Such documents include, among others:

a. The Agreement to Guarantee, which describes the roles and responsibilities of the Qualified Issuer, will be signed by the Qualified Issuer and the Guarantor and will include term sheets as exhibits that will be signed by each individual Eligible CDFI;

b. The Bond Trust Indenture, which describes responsibilities of the Master Servicer/Trustee in overseeing the Trust Estate and servicing of the Bonds and will be entered into by the Qualified Issuer and the Master Servicer/Trustee;

c. The Bond Loan Agreement, which describes the terms and conditions of Bond Loans and will be entered into by the Qualified Issuer and each Eligible CDFI that receives a Bond Loan;

d. The Bond Purchase Agreement, which describes the terms and conditions under which the Bond Purchaser will purchase the Bonds issued by the Qualified Issuer and will be signed by the Bond Purchaser, the Qualified Issuer, the Guarantor and the CDFI Fund; and

e. The Future Advance Promissory Bond, which will be signed by the Qualified Issuer as its promise to repay the Bond Purchaser. The template documents may be updated periodically, as needed, and will be tailored, as appropriate, to the terms and conditions of a particular Bond, Bond Loan, and Guarantee.

The Bond Documents and the Bond Loan documents reflect the terms and conditions of the CDFI Bond Guarantee Program and will not be substantially revised or negotiated prior to execution.

F. *Frequently Asked Questions.* The CDFI Fund will periodically post on its Web site responses to questions that are asked by parties interested in the CDFI Bond Guarantee Program.

G. *Designated Bonding Authority.* The CDFI Fund has determined that, for the purposes of this NOGA, it will not solicit applications from entities seeking to serve as a Qualified Issuer in the role of the Designated Bonding Authority, pursuant to 12 CFR 1808.201, in FY 2017.

H. *Noncompetitive process.* The CDFI Bond Guarantee Program is a non-competitive program through which Qualified Issuer Applications and Guarantee Applications will undergo a merit-based evaluation (meaning, applications will not be scored against each other in a competitive manner in which higher ranked applicants are favored over lower ranked applicants).

I. *Relationship to other CDFI Fund programs.*

1. Award funds received under any other CDFI Fund Program cannot be used by any participant, including Qualified Issuers, Eligible CDFIs, and Secondary Borrowers, to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool for a Bond Issue.

2. Bond Proceeds may be combined with New Markets Tax Credits (NMTC) derived equity (*i.e.,* leveraged loan) to make a Qualified Equity Investment (QEI) in a Community Development Entity or to refinance a Qualified Low-Income Community Investment (QLICI) at the beginning of the seven (7) year NMTC compliance period only under the following circumstances: If an Eligible CDFI proposes to use Bond Loan proceeds to finance a leveraged loan in a transaction that includes a NMTC investment, the Eligible CDFI must provide: (1) Additional collateral in the form of Other Pledged Loans or Cash Collateral; (2) a payment guarantee or similar Credit Enhancement; and/or (3) other assurances that are required by Treasury such additional collateral or Credit.

3. Enhancement, and/or assurances must be from a non-Federal source, remain in force during the entire seven-year NMTC compliance period, and comply with the Secondary Loan Requirements. These requirements may be included in the term sheet (which is an exhibit to the Agreement to Guarantee that must be signed by the Eligible CDFI) and the final Bond Loan terms.

4. Bond Proceeds may not be used to refinance a leveraged loan during the seven-year NMTC compliance period. However, Bond Proceeds may be used to refinance a QLICI after the seven-year NMTC compliance period has ended, so long as all other programmatic requirements are met.

5. The terms Qualified Equity Investment, Community Development Entity, and QLICI are defined in the NMTC Program's authorizing statute, 26 U.S.C. 45D.

J. *Relationship and interplay with other Federal programs and Federal funding.* Eligible CDFIs may not use Bond Loans to refinance existing Federal debt or to service debt from other Federal credit programs.

1. The CDFI Bond Guarantee Program underwriting process will include a comprehensive review of the Eligible CDFI's concentration of sources of funds available for debt service, including the concentration of sources from other Federal programs and level of reliance on said sources, to determine the Eligible CDFI's ability to service the additional debt.

2. In the event that the Eligible CDFI proposes to use other Federal funds to service Bond Loan debt or as Credit Enhancement, the CDFI Fund may require, in its sole discretion, that the Eligible CDFI provide written assurance from such other Federal program, in a form that is acceptable to the CDFI Fund and that the CDFI Fund may rely upon, that said use is permissible.

K. *Contemporaneous application submission.* Qualified Issuer Applications may be submitted contemporaneously with Guarantee Applications; however, the CDFI Fund will review an entity's Qualified Issuer Application and make its Qualified Issuer determination prior to approving a Guarantee Application. As noted above, review priority will be given to any Qualified Issuer Application that is accompanied by a Guarantee Application.

L. *Other restrictions on use of funds.* Bond Proceeds may not be used to finance or refinance any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any

store the principal business of which is the sale of alcoholic beverages for consumption off-premises. Bond Proceeds may not be used to finance or refinance tax-exempt obligations or finance or refinance projects that are also financed by tax-exempt obligations if: (a) Such financing or refinancing results in the direct or indirect subordination of the Bond Loan or Bond Issue to the tax-exempt obligations or (b) such financing or refinancing results in a corresponding guarantee of the tax-exempt obligation. Qualified Issuers and Eligible CDFIs must ensure that any financing made in conjunction with tax-exempt obligations complies with CDFI Bond Guarantee Program Regulations.

II. General Application Information

The following requirements apply to all Qualified Issuer Applications and Guarantee Applications submitted under this NOGA, as well as any Qualified Issuer Applications and Guarantee Applications submitted under the FY 2016 NOGA that were neither withdrawn nor declined in FY 2016.

A. *CDFI Certification Requirements.*

1. In general. By statute and regulation, the Qualified Issuer applicant must be either a Certified CDFI (an entity that has been certified by the CDFI Fund as meeting the CDFI certification requirements set forth in 12 CFR 1805.201) or an entity designated by a Certified CDFI to issue Bonds on its behalf. An Eligible CDFI must be a Certified CDFI as of the Bond Issue Date and must maintain its CDFI certification throughout the term of the corresponding Bond.

2. CDFI Certification requirements. Pursuant to the regulations that govern CDFI certification (12 CFR 1805.201), an entity may be certified if it is a legal entity (meaning, that it has properly filed articles of incorporation or other organizing documents with the State or other appropriate body in the jurisdiction in which it was legally established, as of the date the CDFI Certification Application is submitted) and meets the following requirements:

a. Primary mission requirement (12 CFR 1805.201(b)(1)): To be a Certified CDFI, an entity must have a primary mission of promoting community development, which mission must be consistent with its Target Market. In general, the entity will be found to meet the primary mission requirement if its incorporating documents or board-approved narrative statement (*i.e.,* mission statement or resolution) clearly indicate that it has a mission of purposefully addressing the social and/or economic needs of Low-Income individuals, individuals who lack adequate access to capital and/or financial services, distressed communities, and other underserved markets. An Affiliate of a Controlling CDFI, seeking to be certified as a CDFI (and therefore, approved to be an Eligible CDFI to participate in the CDFI Bond Guarantee Program), must demonstrate that it meets the primary mission requirement on its own merit, pursuant to the regulations and the CDFI Certification Application and related guidance materials posted on the CDFI Fund's Web site.

b. Financing entity requirement (12 CFR 1805.201(b)(2)): To be a Certified CDFI, an entity must demonstrate that its predominant business activity is the provision of Financial Products and Financial Services, Development Services, and/or other similar financing.

i. On April 10, 2015, the CDFI Fund published a revision of 12 CFR 1805.201(b)(2), the section of the CDFI certification regulation that governs the ''financing entity'' requirement. The regulatory change creates a means for the CDFI Fund, in its discretion, to deem an Affiliate (meaning, in this case, an entity that is Controlled by a CDFI; see 12 CFR 1805.104(b)) to have met the financing entity requirement based on the financing activity or track record of the Controlling CDFI (Control is defined in 12 CFR 1805.104(q)), solely for the purpose of participating in the CDFI Bond Guarantee Program as an Eligible CDFI.

In order for the Affiliate to rely on the Controlling CDFI's financing track record, (A) the Controlling CDFI must be a Certified CDFI; (B) there must be an operating agreement that includes management and ownership provisions in effect between the two entities (prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund); and (C) the Affiliate must submit a complete CDFI Certification Application to the CDFI Fund no later than March 3, 2017 in order it to be considered for CDFI certification and participation in the FY 2017 application round of the CDFI Bond Guarantee Program.

This regulatory revision affects only the Affiliate's ability to meet the financing entity requirement for purposes of CDFI certification: Said Affiliate must meet the other certification criteria in accordance with the existing regulations governing CDFI certification.

ii. The revised regulation also states that, solely for the purpose of participating in the CDFI Bond Guarantee Program, the Affiliate's provision of Financial Products and Financial Services, Development Services, and/or other similar financing transactions need not be arms-length in nature if such transaction is by and between the Affiliate and Controlling CDFI, pursuant to an operating agreement that includes management and ownership provisions and that is effective prior to the submission of a CDFI Certification Application and is in form and substance that is acceptable to the CDFI Fund.

iii. An Affiliate whose CDFI certification is based on the financing activity or track record of a Controlling CDFI is not eligible to receive financial or technical assistance awards or tax credit allocations under any other CDFI Fund program until such time that the Affiliate meets the financing entity requirement based on its own activity or track record.

iv. If an Affiliate elects to satisfy the financing entity requirement based on the financing activity or track record of a Controlling CDFI, and if the CDFI Fund approves such Affiliate as an Eligible CDFI for the purpose of participation in the CDFI Bond Guarantee Program, said Affiliate's CDFI certification will terminate if: (A) It does not enter into Bond Loan documents with its Qualified Issuer within one (1) year of the date that it signs the term sheet (which is an exhibit to the Agreement to Guarantee); (B) it ceases to be an Affiliate of the Controlling CDFI; or (C) it ceases to adhere to CDFI certification requirements.

v. An Affiliate electing to satisfy the financing entity requirement based on the financing activity or track record of a Controlling CDFI need not have completed any financing activities prior to the date the CDFI Certification Application is submitted or approved. However, the Affiliate and the Controlling CDFI must have entered into the operating agreement described in (b)(i) above, prior to such date, in form and substance that is acceptable to the CDFI Fund.

c. Target Market requirement (12 CFR 1805.201(b)(3)):

i. To be a Certified CDFI, an entity must serve at least one eligible Target Market (either an Investment Area or a Targeted Population) by directing at least 60% of all of its Financial Product activities to one or more eligible Target Market.

ii. Solely for the purpose of participation as an Eligible CDFI in the FY 2017 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet the Target Market requirement by virtue of serving either:

(A) An Investment Area through ''borrowers or investees'' that serve the Investment Area or provide significant benefits to its residents (pursuant to 12 CFR 1805.201(b)(3)(ii)(F)). For purposes of this NOGA, the term ''borrower'' or ''investee'' includes a borrower of a loan originated by the Controlling CDFI that has been transferred to the Affiliate as lender (which loan must meet Secondary Loan Requirements), pursuant to an operating agreement with the Affiliate that includes ownership/investment and management provisions, which agreement must be in effect prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund. Loans originated by the Controlling CDFI do not need to be transferred prior to application submission; however, such loans must be transferred before certification of the Affiliate is effective. If an Affiliate has more than one Controlling CDFI, it may meet this Investment Area requirement through one or more of such Controlling CDFIs' Investment Areas; or

(B) a Targeted Population ''indirectly or through borrowers or investees that directly serve or provide significant benefits to such members'' (pursuant to 12 CFR 1805.201(b)(3)(iii)(B)) if a loan originated by the Controlling CDFI has been transferred to the Affiliate as lender (which loan must meet Secondary Loan Requirements) and the Controlling CDFI's financing entity activities serve the Affiliate's Targeted Population pursuant to an operating agreement that includes ownership/investment and management provisions by and between the Affiliate and the Controlling CDFI, which agreement must be in effect prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund. Loans originated by the Controlling CDFI do not need to be transferred prior to application submission; however, such loans must be transferred before certification of the Affiliate is effective. If an Affiliate has more than one Controlling CDFI, it may meet this Targeted Population requirement through one or more of such Controlling CDFIs' Targeted Populations.

An Affiliate that meets the Target Market requirement through paragraphs (ii) (1) or (2) above, is not eligible to receive financial or technical assistance awards or tax credit allocations under any other CDFI Fund program until such time that the Affiliate meets the Target Market requirements based on its own activity or track record.

iii. If an Affiliate elects to satisfy the target market requirement based on paragraphs (c)(ii)(1) or (2) above, the Affiliate and the Controlling CDFI must have entered into the operating agreement described above, prior to the date that the CDFI Certification Application is submitted, in form and substance that is acceptable to the CDFI Fund.

d. Development Services requirement (12 CFR 1805.201(b)(4)): To be a Certified CDFI, an entity must provide Development Services in conjunction with its Financial Products. Solely for the purpose of participation as an Eligible CDFI in the FY 2017 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet this requirement if: (i) Its Development Services are provided by the Controlling CDFI pursuant to an operating agreement that includes management and ownership provisions with the Controlling CDFI that is effective prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund and (ii) the Controlling CDFI must have provided Development Services in conjunction with the transactions that the Affiliate is likely to purchase, prior to the date of submission of the CDFI Certification Application.

e. Accountability requirement (12 CFR 1805.201(b)(5)): To be a Certified CDFI, an entity must maintain accountability to residents of its Investment Area or Targeted Population through representation on its governing board and/or advisory board(s), or through focus groups, community meetings, and/or customer surveys. Solely for the purpose of participation as an Eligible CDFI in the FY 2017 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet this requirement only if it has a governing board and/or advisory board that has the same composition as the Controlling CDFI and such governing board or advisory board has convened and/or conducted Affiliate business prior to the date of submission of the CDFI Certification Application. If an Affiliate has multiple Controlling CDFIs, the governing board and/or advisory board may have a mixture of representatives from each Controlling CDFI so long as there is at least one representative from each Controlling CDFI.

f. Non-government entity requirement (12 CFR 1805.201(b)(6)): To be a Certified CDFI, an entity can neither be a government entity nor be controlled by one or more governmental entities.

g. For the FY 2017 application round of the CDFI Bond Guarantee Program, only one Affiliate per Controlling CDFI may participate as an Eligible CDFI. However, there may be more than one Affiliate participating as an Eligible CDFI in any given Bond Issue.

3. Operating agreement: An operating agreement between an Affiliate and its Controlling CDFI, as described above, must provide, in addition to the elements set forth above, among other items: (i) Conclusory evidence that the Controlling CDFI Controls the Affiliate, through investment and/or ownership; (ii) explanation of all roles, responsibilities and activities to be performed by the Controlling CDFI including, but not limited to, governance, financial management, loan underwriting and origination, record-keeping, insurance, treasury services, human resources and staffing, legal counsel, dispositions, marketing, general administration, and financial reporting; (iii) compensation arrangements; (iv) the term and termination provisions; (v) indemnification provisions; (vi) management and ownership provisions; and (vii) default and recourse provisions.

4. For more detailed information on CDFI certification requirements, please review the CDFI certification regulation (12 CFR 1805.201, as revised on April 10, 2015) and CDFI Certification Application materials/guidance posted on the CDFI Fund's Web site. Interested parties should note that there are specific regulations and requirements that apply to Depository Institution Holding Companies, Insured Depository Institutions, Insured Credit Unions, and State-Insured Credit Unions.

5. Uncertified entities, including an Affiliate of a Controlling CDFI, that wish to apply to be certified and designated as an Eligible CDFI in the FY 2017 application round of the CDFI Bond Guarantee Program must submit a CDFI Certification Application to the CDFI Fund by 5:00 p.m. ET, March 3, 2017. Any CDFI Certification Application received after such date and time, as well as incomplete applications that are not amended by the deadline, will not be considered for the FY 2017 application round of the CDFI Bond Guarantee Program.

6. In no event will the Secretary approve a Guarantee for a Bond from which a Bond Loan will be made to an entity that is not an Eligible CDFI. The Secretary must make FY 2017 Guarantee Application decisions, and the CDFI Fund must close the corresponding Bonds and Bond Loans, prior to the end of FY 2017 (September 30, 2017). Accordingly, it is essential that CDFI Certification Applications are submitted

timely and in complete form, with all materials and information needed for the CDFI Fund to make a certification decision. Information on CDFI certification, the CDFI Certification Application, and application submission instructions may be found on the CDFI Fund's Web site at *www.cdfifund.gov.*

B. *Application Submission.*

1. Electronic submission. All Qualified Issuer Applications and Guarantee Applications must be submitted electronically through the CDFI Fund's internet-based myCDFIFund portal, which is assessed via the Awards Management Information System (AMIS). Applications sent by mail, fax, or other form will not be permitted, except in circumstances that the CDFI Fund, in its sole discretion, deems acceptable. Please note that Applications will not be accepted through *Grants.gov*. For more information on AMIS, please visit the AMIS Landing Page at *http://amis.cdfifund.gov.*

2. Applicant identifier numbers. Please note that, pursuant to Office of Management and Budget (OMB) guidance (68 FR 38402), each Qualified Issuer applicant and Guarantee applicant must provide, as part of its Application, its Dun and Bradstreet Data Universal Numbering System (DUNS) number, as well as DUNS numbers for its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application and Guarantee Application. In addition, each Application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the IRS confirming the Qualified Issuer applicant's EIN, as well as EINs for its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in any Application. An Application that does not include such DUNS numbers, EINs, and documentation is incomplete and will be rejected by the CDFI Fund. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for the required identification numbers.

3. System for Award Management (SAM). Registering with SAM is required for each Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in any Application. The CDFI Fund will not consider any Applications that do not meet the requirement that each entity must be properly registered before the date of Application submission. Any entity that needs to create a new account or update its current registration must register for a user account in SAM. The CDFI Fund does not manage the SAM registration process, so entities must contact SAM directly for issues related to registration. The CDFI Fund strongly encourages all applicants to ensure that their SAM registration (and the SAM registration for their Program Administrators, Servicers and each Certified CDFI that is included in the Qualified Issuer Application and Guarantee Application) is updated and that their accounts have not expired. For information regarding SAM registration, please visit *https://www.sam.gov.*

4. AMIS accounts. Each Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application or Guarantee Application must register User and Organization accounts in AMIS. Each such entity must be registered as an Organization and register at least one User Account in AMIS. As AMIS is the CDFI Fund's primary means of communication with applicants with regard to its programs, each such entity must make sure that it updates the contact information in its AMIS account before any Application is submitted. For more information on AMIS, please visit the AMIS Landing Page at *https://amis.cdfifund.gov.*

C. *Form of Application.*

1. As of the date of this NOGA, the Qualified Issuer Application, the Guarantee Application, and related application guidance may be found on the CDFI Bond Guarantee Program's page on the CDFI Fund's Web site at *http://www.cdfifund.gov/bond.*

2. Paperwork Reduction Act. Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the Qualified Issuer Application, the Guarantee Application, and the Secondary Loan Requirements have been assigned the following control number: 1559–0044.

3. Application deadlines. In order to be considered for the issuance of a Guarantee under FY 2017 program authority, Qualified Issuer Applications must be submitted by March 3, 2017 and Guarantee Applications must be submitted by March 17, 2017. Qualified Issuer Applications and Guarantee Applications received in FY 2016 that were neither withdrawn nor declined will be considered under FY 2017 authority. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 5:00 p.m. ET, March 3, 2017.

4. Format. Detailed Qualified Issuer Application and Guarantee Application content requirements are found in the Applications and application guidance. The CDFI Fund will read only information requested in the Application and reserves the right not to read attachments or supplemental materials that have not been specifically requested in this NOGA, the Qualified Issuer, or the Guarantee Application. Supplemental materials or attachments such as letters of public support or other statements that are meant to bias or influence the Application review process will not be read.

5. Application revisions. After submitting a Qualified Issuer Application or a Guarantee Application, the applicant will not be permitted to revise or modify the Application in any way unless authorized or requested by the CDFI Fund.

6. Material changes.

a. In the event that there are material changes after the submission of a Qualified Issuer Application prior to the designation as a Qualified Issuer, the applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The CDFI Fund will evaluate such material changes, along with the Qualified Issuer Application, to approve or deny the designation of the Qualified Issuer.

b. In the event that there are material changes after the submission of a Guarantee Application (including, but not limited to, a revision of the Capital Distribution Plan or a change in the Eligible CDFIs that are included in the Application) prior to or after the designation as a Qualified Issuer or approval of a Guarantee Application or Guarantee, the applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The Guarantor will evaluate such material changes, along with the Guarantee Application, to approve or deny the Guarantee Application and/or determine whether to modify the terms and conditions of the Agreement to Guarantee. This evaluation may result in a delay of the approval or denial of a Guarantee Application.

D. *Eligibility and completeness review.* The CDFI Fund will review each Qualified Issuer and Guarantee Application to determine whether it is complete and the applicant meets eligibility requirements described in the Regulations, this NOGA, and the Applications. An incomplete Qualified Issuer Application or Guarantee Application, or one that does not meet

eligibility requirements, will be rejected. If the CDFI Fund determines that additional information is needed to assess the Qualified Issuer's and/or the Certified CDFIs' ability to participate in and comply with the requirements of the CDFI Bond Guarantee Program, the CDFI Fund may require that the Qualified Issuer furnish additional, clarifying, confirming or supplemental information. If the CDFI Fund requests such additional, clarifying, confirming or supplemental information, the Qualified Issuer must provide it within the timeframes requested by the CDFI Fund. Until such information is provided to the CDFI Fund, the Qualified Issuer Application or Guarantee Application will not be moved forward for the substantive review process. The Guarantor shall approve or deny a Guarantee Application no later than 90 days after the date the Guarantee Application has been advanced for substantive review.

E. *Regulated entities.* In the case of Qualified Issuer applicants, proposed Program Administrators, proposed Servicers, and Certified CDFIs that are included in the Qualified Issuer Application or Guarantee Application that are Insured Depository Institutions and Insured Credit Unions, the CDFI Fund will consider information provided by, and views of, the Appropriate Federal Banking Agencies. If any such entity is a CDFI bank holding company, the CDFI Fund will consider information provided by the Appropriate Federal Banking Agencies of the CDFI bank holding company and its CDFI bank(s). Throughout the Application review process, the CDFI Fund will consult with the Appropriate Federal Banking Agency about the applicant's financial safety and soundness. If the Appropriate Federal Banking Agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the applicant to be incapable of undertaking activities related to the CDFI Bond Guarantee Program. The CDFI Fund also reserves the right to require a regulated applicant to improve safety and soundness conditions prior to being approved as a Qualified Issuer or Eligible CDFI. In addition, the CDFI Fund will take into consideration Community Reinvestment Act assessments of Insured Depository Institutions and/or their Affiliates.

F. *Prior CDFI Fund recipients.* All applicants must be aware that success under any of the CDFI Fund's programs is not indicative of success under this NOGA. Prior CDFI Fund recipients should note the following:

1. Pending resolution of noncompliance. If a Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application is a prior recipient or allocatee under any CDFI Fund program and (i) it has submitted reports to the CDFI Fund that demonstrate noncompliance with a previously executed agreement with the CDFI Fund, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is noncompliant with its previously executed agreement, the CDFI Fund will consider the Qualified Issuer Application or Guarantee Application pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.

2. Previous findings of noncompliance. If a Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application is a prior recipient or allocatee under any CDFI Fund program and the CDFI Fund has made a final determination that the entity is noncompliant with a previously executed agreement with the CDFI Fund, but has not notified the entity that it is ineligible to apply for future CDFI Fund program awards or allocations the CDFI Fund will consider the Qualified Issuer Application or Guarantee Application. However, it is strongly advised that the entity take action to address such noncompliance finding, as repeat findings of noncompliance may result in the CDFI Fund determining the entity ineligible to participate in future CDFI Fund program rounds during the period of review of the Application, the applicant and Applications may be deemed ineligible for further review. The CDFI Bond Guarantee Program staff cannot resolve compliance matters: Instead, please contact the CDFI Fund's Certification, Compliance Monitoring, and Evaluation Unit (CCME) if your organization has questions about its current compliance status or has been found not in compliance with a previously executed agreement with the CDFI Fund.

3. Ineligibility due to noncompliance. The CDFI Fund will not consider a Qualified Issuer Application or Guarantee Application if the applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application, is a prior recipient or allocatee under any CDFI Fund program and if, as of the date of Qualified Issuer Application or Guarantee Application submission, (i) the CDFI Fund has made a determination that such entity is noncompliant with a previously executed agreement and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for any future CDFI Fund program awards or allocations. Such entities will be ineligible to submit a Qualified Issuer or Guarantee Application, or be included in such submission, as the case may be, for such time period as specified by the CDFI Fund in writing.

4. Undisbursed award funds. The CDFI Fund will not consider a Qualified Issuer Application or Guarantee Application, if the applicant, its proposed Program Administrator, its proposed Servicer, its Affiliate, or any Certified CDFI that is included in the Qualified Issuer Application or Guarantee Application, is a recipient under any CDFI Fund program and has undisbursed award funds (as defined below) as of the Qualified Issuer Application or Guarantee Application submission date. The CDFI Fund will include the combined undisbursed prior awards, as of the date of the Qualified Issuer Application submission, of the applicant, the proposed Program Administrator, the proposed Servicer, and any Certified CDFIs included in the application.

For purposes of the calculation of undisbursed award funds for the Bank Enterprise Award (BEA) Program, only awards made to the Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and any Certified CDFI included in the Qualified Issuer Application, three to five calendar years prior to the end of the calendar year of the Qualified Issuer Application submission date are included. For purposes of the calculation of undisbursed award funds for the CDFI Program, the Native American CDFI Assistance (NACA) Program, and the Capital Magnet Fund (CMF), only awards made to the Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and any Certified CDFI included in the Qualified Issuer Application, three to five calendar years prior to the end of the calendar year of the Qualified Issuer Application submission date are included.

Undisbursed awards cannot exceed five percent of the total includable awards for the Applicant's BEA/CDFI/NACA/CMF awards as of the date of submission of the Qualified Issuer Application. The calculation of undisbursed award funds does not

include: (i) Tax credit allocation authority made available through the New Markets Tax Credit Program; (ii) any award made available through the CDFI Bond Guarantee Program; (iii) any award funds for which the CDFI Fund received a full and complete disbursement request from the recipient by the date of submission of the Qualified Issuer Application; (iv) any award funds for an award that has been terminated in writing by the CDFI Fund or de-obligated by the CDFI Fund; or (v) any award funds for an award that does not have a fully executed assistance or award agreement. The CDFI Fund strongly encourages Qualified Issuer applicants, proposed Program Administrators, proposed Servicers, and any Certified CDFIs included in a Qualified Issuer Application that wish to request disbursements of undisbursed funds from prior awards to provide the CDFI Fund with a complete disbursement request at least 10 business days prior to the date of submission of a Qualified Issuer Application.

G. *Review of Bond and Bond Loan documents.* Each Qualified Issuer and proposed Eligible CDFI will be required to certify that its appropriate senior management, and its respective legal counsel, has read the Regulations (set forth at 12 CFR part 1808, as well as the CDFI certification regulations set forth at 12 CFR 1805.201, as amended, and the environmental quality regulations set forth at 12 CFR part 1815) and the template Bond Documents and Bond Loan documents posted on the CDFI Fund's Web site including, but not limited to, the following: Bond Trust Indenture, Supplemental Indenture, Bond Loan Agreement, Promissory Note, Bond Purchase Agreement, Designation Notice, Secretary's Guarantee, Collateral Assignment, Reimbursement Note, Opinion of Bond Counsel, Opinion of Counsel to the Borrower, Escrow Agreement, and Closing Checklist.

H. *Contact the CDFI Fund.* A Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any Certified CDFIs included in the Qualified Issuer Application or Guarantee Application that are prior CDFI Fund recipients are advised to: (i) Comply with requirements specified in CDFI Fund assistance, allocation, and/or award agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). Any such parties that are unsure about the disbursement status of any prior award should contact the CDFI Fund's Senior Resource Manager via email at *CDFI.disburseinquiries@cdfi.treas.gov.* All outstanding reports and compliance questions should be directed to CCME staff by email at *ccme@cdfi.treas.gov* or by telephone at (202) 653–0423. The CDFI Fund will respond to applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOGA.

I. *Evaluating prior award performance.* In the case of a Qualified Issuer, a proposed Program Administrator, a proposed Servicer, or Certified CDFI that has received awards from other Federal programs, the CDFI Fund reserves the right to contact officials from the appropriate Federal agency or agencies to determine whether the entity is in compliance with current or prior award agreements, and to take such information into consideration before issuing a Guarantee. In the case of such an entity that has previously received funding through any CDFI Fund program, the CDFI Fund will review the entity's compliance history with the CDFI Fund, including any history of providing late reports, and consider such history in the context of organizational capacity and the ability to meet future reporting requirements. The CDFI Fund may also bar from consideration any such entity that has, in any proceeding instituted against it in, by, or before any court, governmental, or administrative body or agency, received a final determination within the last two years indicating that the entity has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, including, but not limited, to discrimination under (i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (ii) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1686), which prohibits discrimination on the basis of sex; (iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (iv) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (v) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (vi) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (vii) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (viii) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (ix) any other nondiscrimination provisions in the specific statute(s) under which Federal assistance is being made; and (x) the requirements of any other nondiscrimination statutes which may apply to the CDFI Bond Guarantee Program.

J. *Changes to review procedures.* The CDFI Fund reserves the right to change its completeness, eligibility and evaluation criteria, and procedures if the CDFI Fund deems it appropriate. If such changes materially affect the CDFI Fund's decision to approve or deny a Qualified Issuer Application, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site.

K. *Decisions are final.* The CDFI Fund's Qualified Issuer Application decisions are final. The Guarantor's Guarantee Application decisions are final. There is no right to appeal the decisions. Any applicant that is not approved by the CDFI Fund or the Guarantor may submit a new Application and will be considered based on the newly submitted Application. Such newly submitted Applications will be reviewed along with all other pending Applications in the order in which they are received, or by such other criteria that the CDFI Fund may establish, in its sole discretion.

III. Qualified Issuer Application

A. *General.* This NOGA invites interested parties to submit a Qualified Issuer Application to be approved as a Qualified Issuer under the CDFI Bond Guarantee Program.

1. Qualified Issuer. The Qualified Issuer is a Certified CDFI, or an entity designated by a Certified CDFI to issue Bonds on its behalf, that meets the requirements of the Regulations and this NOGA, and that has been approved by the CDFI Fund pursuant to review and evaluation of its Qualified Issuer Application. The Qualified Issuer will, among other duties: (i) Organize the Eligible CDFIs that have designated it to serve as their Qualified Issuer; (ii) prepare and submit a complete and

timely Qualified Issuer and Guarantee Application to the CDFI Fund; (iii) if the Qualified Issuer Application is approved by the CDFI Fund and the Guarantee Application is approved by the Guarantor, prepare the Bond Issue; (iv) manage all Bond Issue servicing, administration, and reporting functions; (v) make Bond Loans; (vi) oversee the financing or refinancing of Secondary Loans; (vii) ensure compliance throughout the duration of the Bond with all provisions of the Regulations, and Bond Documents and Bond Loan Documents entered into between the Guarantor, the Qualified Issuer, and the Eligible CDFI; and (viii) ensure that the Master Servicer/Trustee complies with the Bond Trust Indenture and all other applicable regulations. Further, the role of the Qualified Issuer also is to ensure that its proposed Eligible CDFI applicants possess adequate and well performing assets to support the debt service of the proposed Bond Loan.

2. Qualified Issuer Application. The Qualified Issuer Application is the document that an entity seeking to serve as a Qualified Issuer submits to the CDFI Fund to apply to be approved as a Qualified Issuer prior to consideration of a Guarantee Application.

3. Qualified Issuer Application evaluation, general. Each Qualified Issuer Application will be evaluated by the CDFI Fund and, if acceptable, the applicant will be approved as a Qualified Issuer, in the sole discretion of the CDFI Fund. The CDFI Fund's Qualified Issuer Application review and evaluation process is based on established procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the Application review process, the CDFI Fund will evaluate Qualified Issuer applicants on a merit basis and in a fair and consistent manner. Each Qualified Issuer applicant will be reviewed on its ability to successfully carry out the responsibilities of a Qualified Issuer throughout the life of the Bond. The Applicant must currently meet the criteria established in the Regulations to be deemed a Qualified Issuer. Qualified Issuer Applications that are forward-looking or speculate as to the eventual acquisition of the required capabilities and criteria are unlikely to be approved. Qualified Issuer Application processing will be initiated in chronological order by date of receipt; however, Qualified Issuer Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to deem the Qualified Application complete and move it to the next phase of review. Submitting a substantially incomplete application earlier than other applicants does not ensure first approval.

B. *Qualified Issuer Application: Eligibility.*

1. CDFI certification requirements. The Qualified Issuer applicant must be a Certified CDFI or an entity designated by a Certified CDFI to issue Bonds on its behalf.

2. Designation and attestation by Certified CDFIs. An entity seeking to be approved by the CDFI Fund as a Qualified Issuer must be designated as a Qualified Issuer by at least one Certified CDFI. A Qualified Issuer may not designate itself. The Qualified Issuer applicant will prepare and submit a complete and timely Qualified Issuer Application to the CDFI Fund in accordance with the requirements of the Regulations, this NOGA, and the Application. A Certified CDFI must attest in the Qualified Issuer Application that it has designated the Qualified Issuer to act on its behalf and that the information in the Qualified Issuer Application regarding it is true, accurate, and complete.

C. *Substantive review and approval process.*

1. Substantive review.

a. If the CDFI Fund determines that the Qualified Issuer Application is complete and eligible, the CDFI Fund will undertake a substantive review in accordance with the criteria and procedures described in the Regulations, this NOGA, the Qualified Issuer Application, and CDFI Bond Guarantee Program policies.

b. As part of the substantive evaluation process, the CDFI Fund reserves the right to contact the Qualified Issuer applicant (as well as its proposed Program Administrator, its proposed Servicer, and each designating Certified CDFI in the Qualified Issuer Application) by telephone, email, mail, or through on-site visits for the purpose of obtaining additional, clarifying, confirming, or supplemental application information. The CDFI Fund reserves the right to collect such additional, clarifying, confirming, or supplemental information from said entities as it deems appropriate. If contacted for additional, clarifying, confirming, or supplemental information, said entities must respond within the time parameters set by the CDFI Fund or the Qualified Issuer Application will be rejected.

2. Qualified Issuer criteria. In total, there are more than 60 individual criteria or sub-criteria used to evaluate a Qualified Issuer applicant and all materials provided in the Qualified Issuer Application will be used to evaluate the applicant. Qualified Issuer determinations will be made based on Qualified Issuer applicants' experience and expertise, in accordance with the following criteria:

a. Organizational capability.

i. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to issue Bonds for Eligible Purposes, or is otherwise qualified to serve as Qualified Issuer, as well as manage the Bond Issue on the terms and conditions set forth in the Regulations, this NOGA, and the Bond Documents, satisfactory to the CDFI Fund.

ii. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to originate, underwrite, service and monitor Bond Loans for Eligible Purposes, targeted to Low-Income Areas and Underserved Rural Areas.

iii. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to manage the disbursement process set forth in the Regulations at 12 CFR 1808.302 and 1808.307.

b. Servicer. The Qualified Issuer applicant must demonstrate that it has (either directly or contractually through another designated entity) the appropriate expertise, capacity, experience, and qualifications, or is otherwise qualified to serve as Servicer. The Qualified Issuer Application must provide information that demonstrates that the Qualified Issuer's Servicer has the expertise, capacity, experience, and qualifications necessary to perform certain required administrative duties (including, but not limited to, Bond Loan servicing functions).

c. Program Administrator. The Qualified Issuer applicant must demonstrate that it has (either directly or contractually through another designated entity) the appropriate expertise, capacity, experience, and qualifications, or is otherwise qualified to serve as Program Administrator. The Qualified Issuer Application must provide information that demonstrates that the Qualified Issuer's Program Administrator has the expertise, capacity, experience, and qualifications necessary to perform certain required administrative duties (including, but not limited to, compliance monitoring and reporting functions).

d. Strategic alignment. The Qualified Issuer applicant will be evaluated on its strategic alignment with the CDFI Bond Guarantee Program on factors that include, but are not limited to: (i) Its

mission's strategic alignment with community and economic development objectives set forth in the Riegle Act at 12 U.S.C. 4701; (ii) its strategy for deploying the entirety of funds that may become available to the Qualified Issuer through the proposed Bond Issue; (iii) its experience providing up to 30-year capital to CDFIs or other borrowers in Low-Income Areas or Underserved Rural Areas as such terms are defined in the Regulations at 12 CFR 1808.102; (iv) its track record of activities relevant to its stated strategy; and (v) other factors relevant to the Qualified Issuer's strategic alignment with the program.

e. Experience. The Qualified Issuer applicant will be evaluated on factors that demonstrate that it has previous experience: (i) Performing the duties of a Qualified Issuer including issuing bonds, loan servicing, program administration, underwriting, financial reporting, and loan administration; (ii) lending in Low-Income Areas and Underserved Rural Areas; and (iii) indicating that the Qualified Issuer's current principals and team members have successfully performed the required duties, and that previous experience is applicable to the current principals and team members.

f. Management and staffing. The Qualified Issuer applicant must demonstrate that it has sufficiently strong management and staffing capacity to undertake the duties of Qualified Issuer. The applicant must also demonstrate that its proposed Program Administrator and its proposed Servicer have sufficiently strong management and staffing capacity to undertake their respective requirements under the CDFI Bond Guarantee Program. Strong management and staffing capacity is evidenced by factors that include, but are not limited to: (i) A sound track record of delivering on past performance; (ii) a documented succession plan; (iii) organizational stability including staff retention; and (iv) a clearly articulated, reasonable, and well-documented staffing plan.

g. Financial strength. The Qualified Issuer applicant must demonstrate the strength of its financial capacity and activities including, among other items, financially sound business practices relative to the industry norm for bond issuers, as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, or auditors. Such financially sound business practices will demonstrate: (i) The financial wherewithal to perform activities related to the Bond Issue such as administration and servicing; (ii) the ability to originate, underwrite, close, and disburse loans in a prudent manner; (iii) whether the applicant is depending on external funding sources and the reliability of long-term access to such funding; (iv) whether there are foreseeable counterparty issues or credit concerns that are likely to affect the applicant's financial stability; and (v) a budget that reflects reasonable assumptions about upfront costs as well as ongoing expenses and revenues.

h. Systems and information technology. The Qualified Issuer applicant must demonstrate that it (as well as its proposed Program Administrator and its proposed Servicer) has, among other things: (i) A strong information technology capacity and the ability to manage loan servicing, administration, management, and document retention; (ii) appropriate office infrastructure and related technology to carry out the CDFI Bond Guarantee Program activities; and (iii) sufficient backup and disaster recovery systems to maintain uninterrupted business operations.

i. Pricing structure. The Qualified Issuer applicant must provide its proposed pricing structure for performing the duties of Qualified Issuer, including the pricing for the roles of Program Administrator and Servicer. Although the pricing structure and fees shall be decided by negotiation between market participants without interference or approval by the CDFI Fund, the CDFI Fund will evaluate whether the Qualified Issuer applicant's proposed pricing structure is feasible to carry out the responsibilities of a Qualified Issuer over the life of the Bond and sound implementation of the program.

j. Other criteria. The Qualified Issuer applicant must meet such other criteria as may be required by the CDFI Fund, as set forth in the Qualified Issuer Application or required by the CDFI Fund in its sole discretion, for the purposes of evaluating the merits of a Qualified Issuer Application. The CDFI Fund may request an on-site review of Qualified Issuer applicant to confirm materials provided in the written application, as well as to gather additional due diligence information. The on-site reviews are a critical component of the application review process and will generally be conducted for all applicants not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency. The CDFI Fund reserves the right to conduct a site visit of regulated entities, in its sole discretion.

k. Third-party data sources. The CDFI Fund, in its sole discretion, may consider information from third-party sources including, but not limited to, periodicals or publications, publicly available data sources, or subscriptions services for additional information about the Qualified Issuer applicant, the proposed Program Administrator, the proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application. Any additional information received from such third-party sources will be reviewed and evaluated through a systematic and formalized process.

D. *Notification of Qualified Issuer determination.* Each Qualified Issuer applicant will be informed of the CDFI Fund's decision in writing, by email using the addresses maintained in the entity's AMIS account. The CDFI Fund will not notify the proposed Program Administrator, the proposed Servicer, or the Certified CDFIs included in the Qualified Issuer Application of its decision regarding the Qualified Issuer Application; such contacts are the responsibility of the Qualified Issuer applicant.

E. *Qualified Issuer Application rejection.* In addition to substantive reasons based on the merits of its review, the CDFI Fund reserves the right to reject a Qualified Issuer Application if information (including administrative errors) comes to the attention of the CDFI Fund that adversely affects an applicant's eligibility, adversely affects the CDFI Fund's evaluation of a Qualified Issuer Application, or indicates fraud or mismanagement on the part of a Qualified Issuer applicant or its proposed Program Administrator, its proposed Servicer, and any Certified CDFI included in the Qualified Issuer Application. If the CDFI Fund determines that any portion of the Qualified Issuer Application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application.

IV. Guarantee Applications

A. *General.* This NOGA invites Qualified Issuers to submit a Guarantee Application to be approved for a Guarantee under the CDFI Bond Guarantee Program.

1. Guarantee Application.

a. The Guarantee Application is the application document that a Qualified Issuer (in collaboration with the Eligible CDFI(s) that seek to be included in the proposed Bond Issue) must submit to the CDFI Fund in order to apply for a Guarantee. The Qualified Issuer shall provide all required information in its Guarantee Application to establish that it meets all criteria set forth in the Regulations at 12 CFR 1808.501 and this NOGA and can carry out all CDFI Bond Guarantee Program requirements

including, but not limited to, information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes.

b. The Guarantee Application comprises a Capital Distribution Plan and at least one Secondary Capital Distribution Plan, as well as all other requirements set forth in this NOGA or as may be required by the Guarantor and the CDFI Fund in their sole discretion, for the evaluation and selection of Guarantee applicants.

2. Guarantee Application evaluation, general. The Guarantee Application review and evaluation process will be based on established standard procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the Application review process, the CDFI Fund will evaluate Guarantee applicants on a merit basis and in a fair and consistent manner. Each Guarantee applicant will be reviewed on its ability to successfully implement and carry out the activities proposed in its Guarantee Application throughout the life of the Bond. Eligible CDFIs must currently meet the criteria established in the Regulations to participate in the CDFI Bond Guarantee Program. Guarantee Applications that are forward-looking or speculate as to the eventual acquisition of the required capabilities and criteria by the Eligible CDFI(s) are unlikely to be approved. Guarantee Application processing will be initiated in chronological order by date of receipt; however, Guarantee Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to deem the Guarantee Application complete and move it to the next phase of review. Submitting a substantially incomplete application earlier than other applicants does not ensure first approval.

B. *Guarantee Application: Eligibility.*

1. Eligibility; CDFI certification requirements. If approved for a Guarantee, each Eligible CDFI must be a Certified CDFI as of the Bond Issue Date and must maintain its respective CDFI certification throughout the term of the corresponding Bond. For more information on CDFI Certification and the certification of affiliated entities, including the deadlines for submission of certification applications, see part II of this NOGA.

2. Qualified Issuer as Eligible CDFI. A Qualified Issuer may not participate as an Eligible CDFI within its own Bond Issue, but may participate as an Eligible CDFI in a Bond Issue managed by another Qualified Issuer.

3. Attestation by proposed Eligible CDFIs. Each proposed Eligible CDFI must attest in the Guarantee Application that it has designated the Qualified Issuer to act on its behalf and that the information pertaining to the Eligible CDFI in the Guarantee Application is true, accurate and complete. Each proposed Eligible CDFI must also attest in the Guarantee Application that it will use Bond Loan proceeds for Eligible Purposes and that Secondary Loans will be financed or refinanced in accordance with the applicable Secondary Loan Requirements.

C. *Guarantee Application: Preparation.* When preparing the Guarantee Application, the Eligible CDFIs and Qualified Issuer must collaborate to determine the composition and characteristics of the Bond Issue, ensuring compliance with the Act, the Regulations, and this NOGA. The Qualified Issuer is responsible for the collection, preparation, verification, and submission of the Eligible CDFI information that is presented in the Guarantee Application. The Qualified Issuer will submit the Guarantee Application for the proposed Bond Issue, including any information provided by the proposed Eligible CDFIs. In addition, the Qualified Issuer will serve as the primary point of contact with the CDFI Fund during the Guarantee Application review and evaluation process.

D. *Review and approval process.*

1. Substantive review.

a. If the CDFI Fund determines that the Guarantee Application is complete and eligible, the CDFI Fund will undertake a substantive review in accordance with the criteria and procedures described in the Regulations at 12 CFR 1808.501, this NOGA, and the Guarantee Application. The substantive review of the Guarantee Application will include due diligence, underwriting, credit risk review, and Federal credit subsidy calculation, in order to determine the feasibility and risk of the proposed Bond Issue, as well as the strength and capacity of the Qualified Issuer and each proposed Eligible CDFI. Each proposed Eligible CDFI will be evaluated independently of the other proposed Eligible CDFIs within the proposed Bond Issue; however, the Bond Issue must then cumulatively meet all requirements for Guarantee approval. In general, applicants are advised that proposed Bond Issues that include a large number of proposed Eligible CDFIs are likely to substantially increase the review period.

b. As part of the substantive review process, the CDFI Fund may contact the Qualified Issuer (as well as the proposed Eligible CDFIs included in the Guarantee Application) by telephone, email, mail, or through an on-site visit for the sole purpose of obtaining additional, clarifying, confirming, or supplemental application information. The CDFI Fund reserves the right to collect such additional, clarifying, confirming or supplemental information as it deems appropriate. If contacted for additional, clarifying, confirming, or supplemental information, said entities must respond within the time parameters set by the CDFI Fund or the Guarantee Application will be rejected.

2. Guarantee Application criteria.

a. In general, a Guarantee Application will be evaluated based on the strength and feasibility of the proposed Bond Issue, as well as the creditworthiness and performance of the Qualified Issuer and the proposed Eligible CDFIs. Guarantee Applications must demonstrate that each proposed Eligible CDFI has the capacity for its respective Bond Loan to be a secured, general recourse obligation of the proposed Eligible CDFI and to deploy the Bond Loan proceeds within the required disbursement timeframe as described in the Regulations. Unless receiving significant third-party support, support from a Controlling CDFI, or Credit Enhancements, Eligible CDFIs should not request Bond Loans greater than their current total asset size or which would otherwise significantly impair their net asset or net equity position. In general, an applicant requesting a Bond Loan more than 50 percent of its total asset size should be prepared to clearly demonstrate that it has a reasonable plan to scale its operations prudently and in a manner that does not impair its net asset or net equity position. Further, an entity with a limited operating history or a history of operating losses is unlikely to meet the strength and feasibility requirements of the CDFI Bond Guarantee Program, unless it receives significant third-party support, support from a Controlling CDFI, or Credit Enhancements.

b. The Capital Distribution Plan must demonstrate the Qualified Issuer's comprehensive plan for lending, disbursing, servicing and monitoring each Bond Loan in the Bond Issue. It includes, among other information, the following components:

i. Statement of Proposed Sources and Uses of Funds: Pursuant to the requirements set forth in the Regulations at 12 CFR1808.102(bb) and

1808.301, the Qualified Issuer must provide: (A) A description of the overall plan for the Bond Issue; (B) a description of the proposed uses of Bond Proceeds and proposed sources of funds to repay principal and interest on the proposed Bond and Bond Loans; (C) a certification that 100 percent of the principal amount of the proposed Bond will be used to make Bond Loans for Eligible Purposes on the Bond Issue Date; and (D) description of the extent to which the proposed Bond Loans will serve Low-Income Areas or Underserved Rural Areas;

ii. Bond Issue Qualified Issuer cash flow model: The Qualified Issuer must provide a cash flow model displaying the orderly repayment of the Bond and the Bond Loans according to their respective terms. The cash flow model shall include disbursement and repayment of Bonds, Bond Loans, and Secondary Loans. The cash flow model shall match the aggregated cash flows from the Secondary Capital Distribution Plans of each of the underlying Eligible CDFIs in the Bond Issue pool. Such information must describe the expected distribution of asset classes to which each Eligible CDFI expects to disburse funds, the proposed disbursement schedule, quarterly or semi-annual amortization schedules, interest-only periods, maturity date of each advance of funds, and assumed net interest margin on Secondary Loans above the assumed Bond Loan rate;

iii. Organizational capacity: If not submitted concurrently, the Qualified Issuer must attest that no material changes have occurred since the time that it submitted the Qualified Issuer Application;

iv. Credit Enhancement (if applicable): The Qualified Issuer must provide information about the adequacy of proposed risk mitigation provisions designed to protect the financial interests of the Federal Government, either directly or indirectly through supporting the financial strength of the Bond Issue. This includes, but is not limited to, the amount and quality of any Credit Enhancements, terms and specific conditions such as renewal options, and any limiting conditions or revocability by the provider of the Credit Enhancement. For any third-party providing a Credit Enhancement, the Qualified Issuer must provide the most recent three years of audited financial statements and a brief analysis of the creditworthiness of such entity. Any Credit Enhancement must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank;

v. Proposed Term Sheets: For each Eligible CDFI that is part of the proposed Bond Issue, the Qualified Issuer must submit a proposed Term Sheet using the template provided on the CDFI Fund's Web site. The proposed Term Sheet must clearly state all relevant and critical terms of the proposed Bond Loan including, but not limited to: Any requested prepayment provisions, unique conditions precedent, proposed covenants and exact amounts/percentages for determining the Eligible CDFI's ability to meet program requirements, and terms and exact language describing any Credit Enhancements. Terms may be either altered and/or negotiated by the CDFI Fund in its sole discretion, based on the proposed structure in the application, to ensure that adequate protection is in place for the Guarantor;

vi. Secondary Capital Distribution Plan(s): Each proposed Eligible CDFI must provide a comprehensive plan for financing, disbursing, servicing and monitoring Secondary Loans, address how each proposed Secondary Loan will meet Eligible Purposes, and address such other requirements listed below that may be required by the Guarantor and the CDFI Fund. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the Controlling CDFI must describe how the Eligible CDFI and the Controlling CDFI, together, will meet the requirements listed below:

(A) Narrative and Statement of Proposed Sources and Uses of Funds: Each Eligible CDFI will: (1) Provide a description of proposed uses of funds, including the extent to which Bond Loans will serve Low-Income Areas or Underserved Rural Areas, and the extent to which Bond Loan proceeds will be used (i) to make the first monthly installment of a Bond Loan payment, (ii) pay Issuance Fees up to one percent of the Bond Loan, and (iii) finance Loan Loss Reserves related to Secondary Loans; (2) attest that 100 percent of Bond Loan proceeds designated for Secondary Loans will be used to finance or refinance Secondary Loans that meet Secondary Loan Requirements; (3) describe a plan for financing, disbursing, servicing, and monitoring Secondary Loans; (4) indicate the expected asset classes to which it will lend under the Secondary Loan Requirements; (5) indicate examples of previous lending and years of experience lending to a specific asset class, especially with regards to the number and dollar volume of loans made in the five years prior to application submission to the specific asset classes to which an Eligible CDFI is proposing to lend Bond Loan proceeds; (6) provide a table detailing specific uses and timing of disbursements, including terms and relending plans if applicable; and (7) a community impact analysis, including how the proposed Secondary Loans will address financing needs that the private market is not adequately serving and specific community benefit metrics;

(B) Eligible CDFI cash flow model: Each Eligible CDFI must provide a cash flow model of the proposed Bond Loan which: (1) Matches each Eligible CDFI's portion of the Qualified Issuer's cash flow model; and (2) tracks the flow of funds through the term of the Bond Issue and demonstrates disbursement and repayment of the Bond Loan, Secondary Loans, and any utilization of the Relending Fund, if applicable. Such information must describe: The expected distribution of asset classes to which each Eligible CDFI expects to disburse funds, the proposed disbursement schedule, quarterly or semi-annual amortization schedules, interest-only periods, maturity date of each advance of funds, and the assumed net interest margin on Secondary Loans above the assumed Bond Loan rate;

(C) Organizational capacity: Each Eligible CDFI must provide documentation indicating the ability of the Eligible CDFI to manage its Bond Loan including, but not limited to: (1) Organizational ownership and a chart of affiliates; (2) organizational documents, including policies and procedures related to loan underwriting and asset management; (3) management or operating agreement, if applicable; (4) an analysis by management of its ability to manage the funding, monitoring, and collection of loans being contemplated with the proceeds of the Bond Loan; (5) information about its board of directors; (6) a governance narrative; (7) description of senior management and employee base; (8) independent reports, if available; (9) strategic plan or related progress reports; and (10) a discussion of the management and information systems used by the Eligible CDFI;

(D) Policies and procedures: Each Eligible CDFI must provide relevant policies and procedures including, but not limited to: A copy of the asset-liability matching policy, if applicable; and loan policies and procedures which address topics including, but not limited to: Origination, underwriting, credit approval, interest rates, closing, documentation, asset management, and portfolio monitoring, risk-rating definitions, charge-offs, and loan loss reserve methodology;

(E) Financial statements: Each Eligible CDFI must provide information about the Eligible CDFI's current and future financial position, including but not limited to: (1) Most recent four years of audited financial statements; (2) current year-to-date or interim financial statement; (3) a copy of the current year's approved budget or projected budget if the entity's Board has not yet approved such budget; (4) a three year operating projection; and (5) a three year forecast of the statement of financial position or balance sheet, statement of activities or income statement, and statement of cash flows in the standardized template provided by the CDFI Fund;

(F) Loan portfolio information: Each Eligible CDFI must provide information including, but not limited to: (1) Loan portfolio quality report; (2) pipeline report; (3) portfolio listing; (4) a description of other loan assets under management; (5) loan products; (6) independent loan review report; (7) impact report case studies; and (8) a loan portfolio by risk rating and loan loss reserves; and

(G) Funding sources and financial activity information: Each Eligible CDFI must provide information including, but not limited to: (1) Current grant information; (2) funding projections; (3) credit enhancements; (4) historical investor renewal rates; (5) covenant compliance; (6) off-balance sheet contingencies; (7) earned revenues; and (8) debt capital statistics.

vii. Assurances and certifications that not less than 100 percent of the principal amount of Bonds will be used to make Bond Loans for Eligible Purposes beginning on the Bond Issue Date, and that Secondary Loans shall be made as set forth in subsection 1808.307(b); and

viii. Such other information that the Guarantor, the CDFI Fund and/or the Bond Purchaser may deem necessary and appropriate.

c. The CDFI Fund will use the information described in the Capital Distribution Plan and Secondary Capital Distribution Plan(s) to evaluate the feasibility of the proposed Bond Issue, with specific attention paid to each Eligible CDFI's financial strength and organizational capacity. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the CDFI Fund will pay specific attention to the Controlling CDFI's financial strength and organizational capacity as well as the operating agreement between the proposed Eligible CDFI and the Controlling CDFI. All materials provided in the Guarantee Application will be used to evaluate the proposed Bond Issue. In total, there are more than 100 individual criteria or sub-criteria used to evaluate each Eligible CDFI. Specific criteria used to evaluate each Eligible CDFI shall include, but not be limited to, the following criteria below. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the following specific criteria will also be used to evaluate both the proposed Eligible CDFI and the Controlling CDFI:

i. Historical financial ratios: Ratios which together have been shown to be predictive of possible future default will be used as an initial screening tool, including total asset size, net asset or Tier 1 Core Capital ratio, self-sufficiency ratio, non-performing asset ratio, liquidity ratio, reserve over nonperforming assets, and yield cost spread;

ii. Quantitative and qualitative attributes under the ''CAMEL'' framework: After initial screening, the CDFI Fund will utilize a more detailed analysis under the ''CAMEL'' framework, including but not limited to:

(A) Capital Adequacy: Attributes such as the debt-to-equity ratio, status, and significance of off-balance sheet liabilities or contingencies, magnitude, and consistency of cash flow performance, exposure to affiliates for financial and operating support, trends in changes to capitalization, and other relevant attributes;

(B) Asset Quality: Attributes such as the charge-off ratio, adequacy of loan loss reserves, sector concentration, borrower concentration, asset composition, security and collateralization of the loan portfolio, trends in changes to asset quality, and other relevant attributes;

(C) Management: Attributes such as documented best practices in governance, strategic planning and board involvement, robust policies and procedures, tenured and experienced management team, organizational stability, infrastructure and information technology systems, and other relevant attributes;

(D) Earnings and Performance: Attributes such as net operating margins, deployment of funds, self-sufficiency, trends in earnings, and other relevant attributes;

(E) Liquidity: Attributes such as unrestricted cash and cash equivalents, ability to access credit facilities, access to grant funding, covenant compliance, affiliate relationships, concentration of funding sources, trends in liquidity, and other relevant attributes;

iii. Forecast performance and other relevant criteria: The CDFI Fund will stress test each Eligible CDFI's forecasted performance under scenarios that are specific to the unique circumstance and attributes of the organization. Additionally, the CDFI Fund will consider other relevant criteria that have not been adequately captured in the preceding steps as part of the due diligence process. Such criteria may include, but not be limited to, the size and quality of any third-party Credit Enhancements or other forms of support.

(A) Overcollateralization: The commitment by an Eligible CDFI to over-collateralize a proposed Bond Loan with excess Secondary Loans is a criterion that may affect the viability of a Guarantee Application by decreasing the estimated net present value of the long-term cost of the Guarantee to the Federal Government, by decreasing the probability of default, and/or increasing the recovery rate in the event of default. An Eligible CDFI committing to overcollateralization may not be required to deposit funds in the Relending Account, subject to the maintenance of certain unique requirements that are detailed in the template Agreement to Guarantee and Bond Loan Agreement.

(B) Credit Enhancements: The provision of third-party Credit Enhancements, including any Credit Enhancement from a Controlling CDFI or any other affiliated entity, is a criterion that may affect the viability of a Guarantee Application by decreasing the estimated net present value of the long-term cost of the Guarantee to the Federal Government. Credit Enhancements are considered in the context of the structure and circumstances of each Guarantee Application.

(C) On-Site Review: The CDFI Fund may request an on-site review of an Eligible CDFI to confirm materials provided in the written application, as well as to gather additional due diligence information. The on-site reviews are a critical component of the application review process and will generally be conducted for all applicants not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency. The CDFI Fund reserves the right to conduct a site visit of regulated entities, in its sole discretion.

(D) Secondary Loan Asset Classes: Eligible CDFIs that propose to use funds for new products or lines of business must demonstrate that they have the organizational capacity to manage such activities in a prudent manner. Failure

to demonstrate such organizational capacity may be factored into the consideration of Asset Quality or Management criteria as listed above in this section.

3. Credit subsidy cost. The credit subsidy cost is the net present value of the estimated long-term cost of the Guarantee to the Federal Government as determined under the applicable provisions of the Federal Credit Reform Act of 1990, as amended (FCRA). Treasury has not received appropriated amounts from Congress to cover the credit subsidy costs associated with the Guarantees issued pursuant to this NOGA. In accordance with FCRA, Treasury must consult with, and obtain the approval of, OMB for Treasury's calculation of the credit subsidy cost of each Guarantee prior to entering into any Agreement to Guarantee.

E. *Guarantee approval; Execution of documents.*

1. The Guarantor, in the Guarantor's sole discretion, may approve a Guarantee, after consideration of the recommendation from the CDFI Bond Guarantee Program's Credit Review Board and/or based on the merits of the Guarantee Application. The Guarantor shall approve or deny a Guarantee Application no later than 90 days after the date the Guarantee Application was advanced for substantive review.

2. The Guarantor reserves the right to approve Guarantees, in whole or in part, in response to any, all, or none of the Guarantee Applications submitted in response to this NOGA. The Guarantor also reserves the right to approve any Guarantees in an amount that is less than requested in the corresponding Guarantee Application. Pursuant to the Regulations at 12 CFR 1808.504(c), the Guarantor may limit the number of Guarantees made per year to ensure that a sufficient examination of Guarantee Applications is conducted.

3. The CDFI Fund will notify the Qualified Issuer in writing of the Guarantor's approval or disapproval of a Guarantee Application. If approved for a Guarantee, the Qualified Issuer will enter into an Agreement to Guarantee, which will include a term sheet that will be signed by each Eligible CDFI.

4. Following the execution and delivery of the Agreement to Guarantee (and the respective term sheets), the parties will proceed to the Bond Issue Date, when the parties will sign and enter into the remaining Bond Documents and Bond Loan documents.

5. Please note that the most recently dated templates of Bond Documents and Bond Loan documents that are posted on the CDFI Fund's Web site will not be substantially revised or negotiated prior to closing of the Bond and Bond Loan and issuance of the corresponding Guarantee. If a Qualified Issuer or a proposed Eligible CDFI does not understand the terms and conditions of the Bond Documents or Bond Loan documents (including those listed in Section II.G., above), it should ask questions or seek technical assistance from the CDFI Fund. However, if a Qualified Issuer or a proposed Eligible CDFI disagrees or is uncomfortable with any term/condition, or if legal counsel to either cannot provide a legal opinion in substantially the same form and content of the required legal opinion, it should not apply for a Guarantee.

6. The Guarantee shall not be effective until the Guarantor signs and delivers the Guarantee.

F. *Guarantee denial.* The Guarantor, in the Guarantor's sole discretion, may deny a Guarantee, after consideration of the recommendation from the Credit Review Board and/or based on the merits of the Guarantee Application. In addition, the Guarantor reserves the right to deny a Guarantee Application if information (including any administrative error) comes to the Guarantor's attention that adversely affects the Qualified Issuer's eligibility, adversely affects the evaluation or scoring of an Application, or indicates fraud or mismanagement on the part of the Qualified Issuer, Program Administrator, Servicer, and/or Eligible CDFIs. Further, if the Guarantor determines that any portion of the Guarantee Application is incorrect in any material respect, the Guarantor reserves the right, in the Guarantor's sole discretion, to deny the Application.

V. Guarantee Administration

A. *Pricing information.* Bond Loans will be priced based upon the underlying Bond issued by the Qualified Issuer and purchased by the Federal Financing Bank (FFB or Bond Purchaser). The FFB will set the liquidity premium at the time of the Bond Issue Date, based on the duration and maturity of the Bonds according to the FFB's lending policies (*www.treasury.gov/ffb*). Liquidity premiums will be charged in increments of 1/8th of a percent (*i.e.,* 12.5 basis points).

B. *Fees and other payments.* The following table includes some of the fees that may be applicable to Qualified Issuers and Eligible CDFIs after approval of a Guarantee of a Bond Issue, as well as Risk-Share Pool funding, prepayment penalties or discounts, and Credit Enhancements. The table is not exhaustive; additional fees payable to the CDFI Fund or other parties may apply.

Fee	Description
Agency Administrative Fee ..	Payable annually to the CDFI Fund by the Qualified Issuer. Equal to 10 basis points on the amount of the unpaid principal of the Bond Issue.
Bond Issuance Fees	Amounts paid by an Eligible CDFI for reasonable and appropriate expenses, administrative costs, and fees for services in connection with the issuance of the Bond (but not including the Agency Administrative Fee) and the making of the Bond Loan. Bond Issuance Fees negotiated between the Qualified Issuer, the Master Servicer/Trustee, and the Eligible CDFI. Up of 1% of Bond Loan Proceeds may be used to finance Bond Issuance Fees.
Servicer Fee	The fees paid by the Eligible CDFI to the Qualified Issuer's Servicer. Servicer fees negotiated between the Qualified Issuer and the Eligible CDFI.
Program Administrator Fee ..	The fees paid by the Eligible CDFI to the Qualified Issuer's Program Administrator. Program Administrator fees negotiated between the Qualified Issuer and the Eligible CDFI.
Master Servicer/Trustee Fee	The fees paid by the Qualified Issuer and the Eligible CDFI to the Master Servicer/Trustee to carry out the responsibilities of the Bond Trust Indenture. In general, the Master Servicer/Trustee fee for a Bond Issue with a single Eligible CDFI is the greater of 16 basis points per annum or $10,000 per month once the Bond Loans are fully disbursed. Fees for Bond Issues with more than one Eligible CDFI are negotiated between the Master Servicer/Trustee, Qualified Issuer, and Eligible CDFI. Any special servicing costs and resolution or liquidation fees due to a Bond Loan default are the responsibility of the Eligible CDFI. Please see the template legal documents at *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/closing-disbursement-step.aspx#step4* for more specific information. *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/closing-disbursement-step.aspx#step4* for more specific information.

Fee	Description
Risk-Share Pool Funding	The funds paid by the Eligible CDFIs to cover Risk- Share Pool requirements; capitalized by pro rata payments equal to 3% of the amount disbursed on the Bond from all Eligible CDFIs within the Bond Issue.
Prepayment Penalties or Discounts.	Prepayment penalties or discounts may be determined by the FFB at the time of prepayment.
Credit Enhancements	Pledges made to enhance the quality of a Bond and/or Bond Loan. Credit Enhancements include, but are not limited to, the Principal Loss Collateral Provision and letters of credit. Credit Enhancements must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank.

C. *Terms for Bond Issuance and disbursement of Bond Proceeds.* In accordance with 12 CFR 1808.302(f), each year, beginning on the one year anniversary of the Bond Issue Date (and every year thereafter for the term of the Bond Issue), each Qualified Issuer must demonstrate that no less than 100 percent of the principal amount of the Guaranteed Bonds currently disbursed and outstanding has been used to make loans to Eligible CDFIs for Eligible Purposes. If a Qualified Issuer fails to demonstrate this requirement within the 90 days after the anniversary of the Bond Issue Date, the Qualified Issuer must repay on that portion of Bonds necessary to bring the Bonds that remain outstanding after such repayment is in compliance with the 100 percent requirement above.

D. *Secondary Loan Requirements.* In accordance with the Regulations, Eligible CDFIs must finance or refinance Secondary Loans for Eligible Purposes (not including loan loss reserves) that comply with Secondary Loan Requirements. The Secondary Loan Requirements are found on the CDFI Fund's Web site at *www.cdfifund.gov.* Applicants should become familiar with the published Secondary Loan Requirements. Secondary Loan Requirements are classified by asset class and are subject to a Secondary Loan commitment process managed by the Qualified Issuer.

Eligible CDFIs must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows: (i) No later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of the Bond Loan proceeds allocated for Secondary Loans, and (ii) no later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of the Bond Loan proceeds allocated for Secondary Loans. In the event that the Eligible CDFI does not comply with the foregoing requirements of clauses (i) or (ii) of this paragraph, the available Bond Loan proceeds at the end of the applicable period shall be reduced by an amount equal to the difference between the amount required by clauses (i) or (ii) for the applicable period minus the amount previously committed to the Secondary Loans in the applicable period. Secondary Loans shall carry loan maturities suitable to the loan purpose and be consistent with loan-to-value requirements set forth in the Secondary Loan Requirements. Secondary Loan maturities shall not exceed the corresponding Bond or Bond Loan maturity date. It is the expectation of the CDFI Fund that interest rates for the Secondary Loans will be reasonable based on the borrower and loan characteristics.

E. *Secondary Loan collateral requirements.*

1. The Regulations state that Secondary Loans must be secured by a first lien of the Eligible CDFI on pledged collateral, in accordance with the Regulations (at 12 CFR 1808.307(f)) and within certain parameters. Examples of acceptable forms of collateral may include, but are not limited to: Real property (including land and structures), leasehold mortgages, machinery, equipment and movables, cash and cash equivalents, accounts receivable, letters of credit, inventory, fixtures, contracted revenue streams from non-Federal counterparties, provided the Secondary Borrower pledges all assets, rights and interests necessary to generate such revenue stream, and a Principal Loss Collateral Provision. Intangible assets, such as customer relationships, intellectual property rights, and to-be- constructed real estate improvements, are not acceptable forms of collateral.

2. The Regulations require that Bond Loans must be secured by a first lien on a collateral assignment of Secondary Loans, and further that the Secondary Loans must be secured by a first lien or parity lien on acceptable collateral.

3. Valuation of the collateral pledged by the Secondary Borrower must be based on the Eligible CDFI's credit policy guidelines and must conform to the standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the Secondary Loan Requirements.

4. Independent third-party appraisals are required for the following collateral: Real estate, leasehold interests, fixtures, machinery and equipment, movables stock valued in excess of $250,000, and contracted revenue stream from non-Federal creditworthy counterparties. Secondary Loan collateral shall be valued using the cost approach, net of depreciation and shall be required for the following: accounts receivable, machinery, equipment and movables, and fixtures.

F. *Qualified Issuer approval of Bond Loans to Eligible CDFIs.* The Qualified Issuer shall not approve any Bond Loans to an Eligible CDFI where the Qualified Issuer has actual knowledge, based upon reasonable inquiry, that within the past five (5) years the Eligible CDFI: (i) Has been delinquent on any payment obligation (except upon a demonstration by the Qualified Issuer satisfactory to the CDFI Fund that the delinquency does not affect the Eligible CDFI's creditworthiness), or has defaulted and failed to cure any other obligation, on a loan or loan agreement previously made under the Act; (ii) has been found by the Qualified Issuer to be in default of any repayment obligation under any Federal program; (iii) is financially insolvent in either the legal or equitable sense; or (iv) is not able to demonstrate that it has the capacity to comply fully with the payment schedule established by the Qualified Issuer.

G. *Credit Enhancements; Principal Loss Collateral Provision.*

1. In order to achieve the statutory zero-credit subsidy constraint of the CDFI Bond Guarantee Program and to avoid a call on the Guarantee, Eligible CDFIs are encouraged to include Credit Enhancements and Principal Loss Collateral Provisions structured to protect the financial interests of the Federal Government. Any Credit Enhancement or Principal Loss Collateral Provision must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank.

2. Credit Enhancements may include, but are not limited to, payment guarantees from third parties or Affiliate(s), non-Federal capital, lines or letters of credit, or other pledges of financial resources that enhance the Eligible CDFI's ability to make timely

interest and principal payments under the Bond Loan.

3. As distinct from Credit Enhancements, Principal Loss Collateral Provisions may be provided in lieu of pledged collateral and in addition to pledged collateral. A Principal Loss Collateral Provision shall be in the form of cash or cash equivalent guarantees from non-Federal capital in amounts necessary to secure the Eligible CDFI's obligations under the Bond Loan after exercising other remedies for default. For example, a Principal Loss Collateral Provision may include a deficiency guarantee whereby another entity assumes liability after other default remedies have been exercised, and covers the deficiency incurred by the creditor. The Principal Loss Collateral Provision shall, at a minimum, provide for the provision of cash or cash equivalents in an amount that is not less than the difference between the value of the collateral and the amount of the accelerated Bond Loan outstanding.

4. In all cases, acceptable Credit Enhancements or Principal Loss Collateral Provisions shall be proffered by creditworthy providers and shall provide information about the adequacy of the facility in protecting the financial interests of the Federal Government, either directly or indirectly through supporting the financial strength of the Bond Issue. This includes, but is not limited to, the amount and quality of any Credit Enhancements, the financial strength of the provider of the Credit Enhancement, the terms, specific conditions such as renewal options, and any limiting conditions or revocability by the provider of the Credit Enhancement.

5. For Secondary Loans benefitting from a Principal Loss Collateral Provision (*e.g.,* a deficiency guarantee), the entity providing the Principal Loss Collateral Provision must be underwritten based on the same criteria as if the Secondary Loan were being made directly to that entity with the exception that the guarantee need not be collateralized.

6. If the Principal Loss Collateral Provision is provided by a financial institution that is regulated by an Appropriate Federal Banking Agency or an Appropriate State Agency, the guaranteeing institution must demonstrate performance of financially sound business practices relative to the industry norm for providers of collateral enhancements as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, and auditors, as appropriate.

H. *Reporting requirements.*

1. Reports.

a. General. As required pursuant to the Regulations at 12 CFR 1808.619, and as set forth in the Bond Documents and the Bond Loan documents, the CDFI Fund will collect information from each Qualified Issuer which may include, but will not be limited to: (i) Quarterly and annual financial reports and data (including an OMB single audit, as applicable) for the purpose of monitoring the financial health, ratios and covenants of Eligible CDFIs that include asset quality (nonperforming assets, loan loss reserves, and net charge-off ratios), liquidity (current ratio, working capital, and operating liquidity ratio), solvency (capital ratio, self-sufficiency, fixed charge, leverage, and debt service coverage ratios); (ii) annual reports as to the compliance of the Qualified Issuer and Eligible CDFIs with the Regulations and specific requirements of the Bond Documents and Bond Loan documents; (iii) monthly reports on uses of Bond Loan proceeds and Secondary Loan proceeds; (iv) Master Servicer/Trustee summary of program accounts and transactions for each Bond Issue; (v) Secondary Loan certifications describing Eligible CDFI lending, collateral valuation, and eligibility; (vi) financial data on Secondary Loans to monitor underlying collateral, gauge overall risk exposure across asset classes, and assess loan performance, quality, and payment history; (vii) annual certifications of compliance with program requirements; (viii) material event disclosures including any reports of Eligible CDFI management and/or organizational changes; (ix) annual updates to the Capital Distribution Plan (as described below); (x) supplements and/or clarifications to correct reporting errors (as applicable); (xi) project level reports to understand overall program impact and the manner in which Bond Proceeds are deployed for Eligible Community or Economic Development Purposes; and (xii) such other information that the CDFI Fund and/or the Bond Purchaser may require, including but not limited to racial and ethnic data showing the extent to which members of minority groups are beneficiaries of the CDFI Bond Guarantee Program, to the extent permissible by law.

b. Additional reporting by Qualified Issuers. A Qualified Issuer receiving a Guarantee shall submit annual updates to the approved Capital Distribution Plan, including an updated Proposed Sources and Uses of Funds for each Eligible CDFI, noting any deviation from the original baseline with regards to both timing and allocation of funding among Secondary Loan asset classes. The Qualified Issuer shall also submit a narrative, no more than five (5) pages in length for each Eligible CDFI, describing the Eligible CDFI's capacity to manage its Bond Loan. The narrative shall address any Notification of Material Events and relevant information concerning the Eligible CDFI's management information systems, personnel, executive leadership or board members, as well as financial capacity. The narrative shall also describe how such changes affect the Eligible CDFI's ability to generate impacts in Low-Income or Underserved Rural Areas.

c. Change of Secondary Loan asset classes. Any Eligible CDFI seeking to expand the allowable Secondary Loan asset classes beyond what was approved by the CDFI Bond Guarantee Program's Credit Review Board or make other deviations that could potentially result in a modification, as that term is defined in OMB Circulars A–11 and A–129, must receive approval from the CDFI Fund before the Eligible CDFI can begin to enact the proposed changes. The CDFI Fund will consider whether the Eligible CDFI possesses or has acquired the appropriate systems, personnel, leadership, and financial capacity to implement the revised Capital Distribution Plan. The CDFI Fund will also consider whether these changes assist the Eligible CDFI in generating impacts in Low-Income or Underserved Rural Areas. Such changes will be reviewed by the CDFI Bond Guarantee Program and presented to the Credit Review Board for approval, and appropriate consultation will be made with OMB to ensure compliance with OMB Circulars A–11 and A–129, prior to notifying the Eligible CDFI if such changes are acceptable under the terms of the Bond Loan Agreement. An Eligible CDFI may request such an update to its Capital Distribution Plan prior to Bond Issue Closing, and thereafter may only request such an update once per the Eligible CDFI's fiscal year.

d. Reporting by Affiliates and Controlling CDFIs. In the case of an Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the CDFI Fund will require that the Affiliate and Controlling CDFI provide certain joint reports, including but not limited to those listed in subparagraph 1(a) above.

e. Detailed information on specific reporting requirements and the format, frequency, and methods by which this information will be transmitted to the CDFI Fund will be provided to

Qualified Issuers, Program Administrators, Servicers, and Eligible CDFIs through the Bond Loan Agreement, correspondence, and webinar trainings, and/or scheduled outreach sessions.

f. Reporting requirements will be enforced through the Agreement to Guarantee and the Bond Loan Agreement, and will contain a valid OMB control number pursuant to the Paperwork Reduction Act, as applicable.

g. Each Qualified Issuer will be responsible for the timely and complete submission of the annual reporting documents, including such information that must be provided by other entities such as Eligible CDFIs or Secondary Borrowers. If such other entities are required to provide annual report information or documentation, or other documentation that the CDFI Fund may require, the Qualified Issuer will be responsible for ensuring that the information is submitted timely and complete. Notwithstanding the foregoing, the CDFI Fund reserves the right to contact such entities and require that additional information and documentation be provided directly to the CDFI Fund.

h. Annual Assessments. Each Qualified Issuer and Eligible CDFI will be required to have an independent third-party conduct an Annual Assessment of its Bond Loan portfolio. The Annual Assessment is intended to support the CDFI Fund's annual monitoring of the Bond Loan portfolio and to collect financial health, internal control, investment impact measurement methodology information related to the Eligible CDFIs. This assessment is consistent with the program's requirements for Compliance Management and Monitoring (CMM) and Portfolio Management and Loan Monitoring (PMLM), and will be required pursuant to the Bond Documents and the Bond Loan documents. The assessment will also add to the Department of the Treasury's review and impact analysis on the use of Bond Loan proceeds in underserved communities and support the CDFI Fund in proactively managing portfolio risks and performance. The Annual Assessment criteria for Qualified Issuers and Eligible CDFIs is available on the CDFI Fund's Web site.

i. The CDFI Fund reserves the right, in its sole discretion, to modify its reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Qualified Issuers. Additional information about reporting requirements pursuant to this NOGA, the Bond Documents and the Bond Loan documents will be subject to the Paperwork Reduction Act, as applicable.

2. Accounting.

a. In general, the CDFI Fund will require each Qualified Issuer and Eligible CDFI to account for and track the use of Bond Proceeds and Bond Loan proceeds. This means that for every dollar of Bond Proceeds received from the Bond Purchaser, the Qualified Issuer is required to inform the CDFI Fund of its uses, including Bond Loan proceeds. This will require Qualified Issuers and Eligible CDFIs to establish separate administrative and accounting controls, subject to the applicable OMB Circulars.

b. The CDFI Fund will provide guidance to Qualified Issuers outlining the format and content of the information that is to be provided on an annual basis, outlining and describing how the Bond Proceeds and Bond Loan proceeds were used.

VI. Agency Contacts

A. *General information on questions and CDFI Fund support.* The CDFI Fund will respond to questions and provide support concerning this NOGA, the Qualified Issuer Application and the Guarantee Application between the hours of 9:00 a.m. and 5:00 p.m. ET, starting with the date of the publication of this NOGA. The final date to submit questions is March 10, 2017. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CDFI Fund will post on its Web site responses to questions of general applicability regarding the CDFI Bond Guarantee Program.

B. *The CDFI Fund's contact information is as follows:*

TABLE 2—CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Email addresses
CDFI Bond Guarantee Program	(202) 653–0421—Option 5	*bgp@cdfi.treas.gov.*
CDFI Certification	(202) 653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	(202) 653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	(202) 653–0422	*AMIS@cdfi.treas.gov.*

C. *Communication with the CDFI Fund.* The CDFI Fund will use the AMIS internet interface to communicate with applicants, Qualified Issuers, Program Administrators, Servicers, Certified CDFIs and Eligible CDFIs, using the contact information maintained in their respective AMIS accounts. Therefore, each such entity must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in its respective AMIS account. For more information about AMIS, please see the AMIS Landing Page at *https://amis.cdfifund.gov.*

VII. Information Sessions and Outreach

The CDFI Fund may conduct webcasts, webinars, or information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Bond Guarantee Program. The CDFI Fund intends to provide targeted outreach to both Qualified Issuer and Eligible CDFI participants to clarify the roles and requirements under the CDFI Bond Guarantee Program. For further information, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

Authority: Pub. L. 111–240; 12 U.S.C. 4701, *et seq.;* 12 CFR part 1808; 12 CFR part 1805; 12 CFR part 1815.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2016–30087 Filed 12–14–16; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13413

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13413, as amended by E.O. 13671, and whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 12, 2016, OFAC blocked the property and interests in property of the following two individuals pursuant to E.O. 13413, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo,'' as amended:

1. MUTONDO, Kalev (a.k.a. KALEV KATANGA, Mutondo; a.k.a. KALEV, Motono; a.k.a. KALEV, Mutundo; a.k.a. MUTOID, Kalev; a.k.a. MUTOMBO, Kalev; a.k.a. MUTOND, Kalev; a.k.a. MUTONDO KATANGA, Kalev; a.k.a. MUTUND, Kalev), 24 Avenue Ma Campagne, Quartier Ma Campagne Commune De Ngaliema, Kinshasa 00243, Congo, Democratic Republic of the; DOB 03 Mar 1957; POB Kasaji, Democratic Republic of the Congo; alt. POB Likasi, Katanga, Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Gender Male; Passport DB0004470 (Congo, Democratic Republic of the) issued 08 Jun 2012 expires 07 Jun 2017; Agence Nationale de Renseignements General Administrator (individual) [DRCONGO].

2. BOSHAB, Evariste (a.k.a. BOSHAB MABUDJ MA BILENGE, Evariste; a.k.a. BOSHAB MABUDJ, Evariste; a.k.a. BOSHAB MABUDJ–MA–BILENGE, Evariste; a.k.a. BOSHAB MABUTSH, Evariste; a.k.a. BOSHAB, Evarist; a.k.a. MULUMBU BOSHAB, Evariste), Avenue du Rail 5, Ngaliema, Kinshasa, Congo, Democratic Republic of the; DOB 12 Jan 1956; POB Teke-Kalamba, Democratic Republic of the Congo; alt. POB Kasai Occidentale Province, Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Gender Male; Passport DB0007366 (Congo, Democratic Republic of the) issued 07 May 2014 expires 06 May 2019; Deputy Prime Minister, Vice Prime Minister, Minister of Interior and Security (individual) [DRCONGO].

Dated: December 12, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–30138 Filed 12–14–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 12, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 17, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0134.

Type of Review: Extension without change of a currently approved collection.

Title: Application to Adopt, Change, or Retain a Tax Year.

Form: 1128.

Abstract: Form 1128 is needed in order to process taxpayers' request to change their tax year. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 232,066.

OMB Control Number: 1545–0720.

Type of Review: Extension without change of a currently approved collection.

Title: Information Return for Tax-Exempt Private Activity Bond Issues (Form 8038), Tax-Exempt Govt Obligation (Form 8038–G), and Small Tax-Exempt Govt Bond Issues, Leases, and Installment Sales (8038–GC).

Form: 8038, 8038–G, 8038–GC.

Abstract: Issuers of state or local bonds must comply with certain information reporting requirements contained in Internal Revenue Code section 149 to qualify for tax exemption. The information must be reported by the issuers about bonds issued by them during each preceding calendar quarter. Forms 8038, 8038–G, and 8038–GC are used to provide the IRS with the information required by Code section 149 and to monitor the requirements of Code sections 141 through 150.

Affected Public: State, Local, and Tribal Governments; Businesses or other for-profits.

Estimated Total Annual Burden Hours: 845,394.

OMB Control Number: 1545–1132.

Type of Review: Revision of a currently approved collection.

Title: Denial of interest deduction on certain obligations to foreign persons.

Abstract: The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j)) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations.

Affected Public: Business or other for-profits.

Estimated Total Annual Burden Hours: 867.

OMB Control Number: 1545–1226.

Type of Review: Extension without change of a currently approved collection.

Title: Proceeds of Bonds Used for Reimbursement—FI–59–89 (TD 8394—Final).

Abstract: This regulation clarifies when the allocation of bond proceeds to reimburse expenditures previously made by an issuer of the bond is treated as an expenditure of the bond proceeds. The issuer must express a reasonable official intent, on or prior to the date of payment, to reimburse the expenditure in order to assure that the reimbursement is not a device to evade requirements imposed by the Internal Revenue Code with respect to tax exempt bonds.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 6,000.

OMB Control Number: 1545–1270.

Type of Review: Extension without change of a currently approved collection.

Title: Gasoline Excise Tax and Gasohol; Compressed Natural Gas.

Abstract: TD 8421 contains final regulations under Internal Revenue Code sections 4081 and 4082, relating to the federal excise tax on gasoline. It affects refiners, importers, and distributors of gasoline and provides guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol. TD 8609 contains final regulations relating to gasohol blending and the tax on compressed natural gas (CNG). The sections relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The sections relating to CNG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 366.

OMB Control Number: 1545–1300.

Type of Review: Revision of a currently approved collection.

Title: Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

Abstract: 26 U.S.C. Section 597 of the Internal Revenue Code provides that the income tax treatment of any transaction in which Federal financial assistance (FFA), is provided with respect to a bank or domestic building and loan association (Institution) will be determined under regulations prescribed by the Secretary. The regulations provide that, generally, FFA is included in the gross income of the recipient in the year it is received. However, in certain circumstances, the inclusion of FFA in income is deferred. The collection of information required by the regulations is necessary to track deferred income and its subsequent recapture, to track any amounts of tax that are not subject to collection, to elect to disaffiliate earlier than would otherwise be permitted, and to elect to apply the provisions of the regulations retroactively.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 2,200.

OMB Control Number: 1545–1338.

Type of Review: Extension without a change of a currently approved collection.

Title: Election Out of Subchapter K for Producers of Natural Gas—TD 8578.

Abstract: This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements on the regulation's effective date are to file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two new permissible accounting methods in the regulations.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 5.

OMB Control Number: 1545–1574.

Type of Review: Extension without a change of a currently approved collection.

Title: Information Reporting for Qualified Tuition and Related Expenses.

Form: 1098–T.

Abstract: Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information regarding tuition payments to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 4,848,090.

OMB Control Number: 1545–1588.

Type of Review: Extension without a change of a currently approved collection.

Title: Adjustments Following Sales of Partnership Interests.

Abstract: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. The regulations require the partnership to attach a statement to its partnership return indicating the adjustment and how it was allocated among the partnership property.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 904,000.

Bob Faber,

Acting Treasury PRA Clearance Officer.

[FR Doc. 2016–30136 Filed 12–14–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0659]

Agency Information Collection Activity (Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) (VA Form 21–0781) and Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault (VA Form 21–0781a))

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Forms 21–0781 and 21–0781a are used to gather specific information about in-service stressors, so VA can assist claimants in obtaining credible supporting evidence that the claimed stressors occurred. In-service stressors reported by veterans must be verifiable. VA cannot thoroughly research military records and other sources of information for credible supporting evidence unless the veteran provides VA with specific information about the in-service stressors. The forms request information that is necessary to conduct meaningful research of records.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System

(FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0659'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) (VA Form 21–0781) and Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault (VA Form 21–0781a).

OMB Control Number: 2900–0659.

Type of Review: Revision of an approved collection.

Abstract: VA Forms 21–0781 and 21–0781a are used to gather specific information about in-service stressors, so VA can assist claimants in obtaining credible supporting evidence that the claimed stressors occurred. In-service stressors reported by veterans must be verifiable. VA cannot thoroughly research military records and other sources of information for credible supporting evidence unless the veteran provides VA with specific information about the in-service stressors. The forms request information that is necessary to conduct meaningful research of records.

Affected Public: Individuals or households.

Estimated Annual Burden: 17,780 hours.

Estimated Average Burden per Respondent: 70 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 15,240.

By direction of the Secretary.

Cynthia Harvey-Pryor,

VA Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–30096 Filed 12–14–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Thursday,
No. 241 December 15, 2016

Part II

Department of Health and Human Services

42 CFR Part 88
World Trade Center Health Program; Amendments to Definitions, Appeals, and Other Requirements; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

[Docket No. CDC–2016–0072; NIOSH–291]

RIN 0920–AA56, 0920–AA44, 0920–AA48, 0920–AA50

World Trade Center Health Program; Amendments to Definitions, Appeals, and Other Requirements

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Final rule.

SUMMARY: In 2011 and 2012, the Secretary, Department of Health and Human Services (HHS), promulgated regulations designed to govern the World Trade Center (WTC) Health Program (Program), including the processes by which eligible responders and survivors may apply for enrollment in the Program, obtain health monitoring and treatment for WTC-related health conditions, and appeal enrollment and treatment decisions, as well as a process to add new conditions to the List of WTC-Related Health Conditions (List). After using the regulations for a number of years, the Administrator of the WTC Health Program identified potential improvements to certain existing provisions, including, but not limited to, appeals of enrollment, certification, and treatment decisions, as well as the procedures for the addition of health conditions for WTC Health Program coverage. He also identified the need to add new regulatory provisions, including, but not limited to, standards for the disenrollment of a WTC Health Program member and decertification of a certified WTC-related health condition. A notice of proposed rulemaking was published on August 17, 2016; this action addresses public comments received on that proposed rulemaking, as well as three interim final rules promulgated since 2011, and finalizes the proposed rule and three interim final rules.

DATES: This rule is effective on January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst; 1090 Tusculum Ave., MS: C–46, Cincinnati, OH 45226; telephone (855) 818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. Executive Summary
A. Purpose of Regulatory Action
B. Summary of Major Provisions
C. Costs
II. Public Participation
III. Background
IV. WTC Health Program Statutory Authority
V. Summary of Final Rule and Response to Comments
VI. Regulatory Assessment Requirements
A. Executive Order 12866 and Executive Order 13563
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Small Business Regulatory Enforcement Fairness Act
E. Unfunded Mandates Reform Act of 1995
F. Executive Order 12988 (Civil Justice)
G. Executive Order 13132 (Federalism)
H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)
J. Plain Writing Act of 2010

I. Executive Summary

A. Purpose of Regulatory Action

On August 17, 2016, the Secretary, HHS, and the Administrator of the WTC Health Program published a notice of proposed rulemaking proposing amendments to some provisions in part 88 in Title 42 and the addition of others (August 2016 NPRM).[1] This final rule includes the Administrator's response to public comments received on the August 2016 NPRM, as well as public comments received in response to three interim final rules establishing portions of 42 CFR part 88, published in 2011, 2013, and 2014, respectively.[2] The amendments to part 88 are intended to benefit both the WTC Health Program and its members by clarifying requirements and improving administrative processes.

B. Summary of Major Provisions

In this action, the Administrator finalizes amendments to a number of existing sections in part 88, including provisions for appeals of enrollment decisions, appeals of certification, decertification, or treatment authorization decisions, and the addition of health conditions to the List of WTC-Related Health Conditions. Some existing language is moved into new sections for clarity. Finally, new language on disenrollment, decertification, appeals of reimbursement denials, and coordination of benefits and recoupment is added to part 88.

C. Costs

The revisions to part 88 proposed in the August 2016 NPRM and finalized in this action are expected to result in approximately $42,742 in costs to the WTC Health Program associated with updating existing Program policies and developing new policies. As explained below, the Program estimates that total costs of the WTC Health Program were $240.5 million in FY 2015 and may range from $265.5 to $388.6 million in FY 2025. Cumulative costs associated with WTC Health Program administration and monitoring and treatment services for all health conditions for fiscal years (FY) 2016 through 2025 are projected to range from $2.9 billion (7% discount rate) to $3.6 billion (3% discount rate).[3]

II. Public Participation

Interested persons or organizations were invited to participate in the August 2016 NPRM by submitting written views, opinions, recommendations, and/or data on any topic related to the proposed rule. All communications received on or before the closing date for comments were fully considered by the Administrator of the WTC Health Program. The August 2016 NPRM as well as public comments received are available in the docket for this rulemaking. Public comments received on the three interim final rules are available in those respective dockets.[4]

Submissions to the August 2016 NPRM docket were received from three commenters, including a labor organization, a joint labor/management trust fund, and the contractor providing care for survivors in the WTC Health Program.

III. Background

This final rule includes the Administrator's response to public comments received on the August 2016 NPRM, as well as public comments received in response to three interim final rules (IFRs). The first IFR was published on July 1, 2011 to establish part 88 and implement the Program, and included all of the original sections establishing eligibility criteria and enrollment processes, health condition certification and treatment requirements, mechanisms to appeal Program decisions, and reimbursement

[1] 81 FR 55086 (Aug. 17, 2016).

[2] These include the July 2011 IFR (establishing part 88 and implementing the Program), 76 FR 38914 (July 1, 2011); the March 2013 IFR (establishing eligibility criteria for Shanksville and Pentagon responders), 78 FR 18855 (Mar. 28, 2013); and the February 2014 IFR (clarifying the definition of ''childhood cancers'' and revising the definition of ''rare cancers''), 79 FR 9100 (Feb. 18, 2014).

[3] Costs for FY 2016–2025 have been evaluated for all health conditions covered by the Program, both those conditions included in the PHS Act at sec. 3312(a)(3) and 3322(b) and those added to the List of WTC-Related Health Conditions in § 88.15, including cancer, new-onset chronic obstructive pulmonary disease, and WTC-related acute traumatic injury.

[4] *See infra* note 9.

(July 2011 IFR).[5] A second IFR was published on March 28, 2013 to establish new eligibility criteria for Pentagon and Shanksville, Pennsylvania responders (March 2013 IFR).[6] A third IFR was published on February 18, 2014 to clarify the definition of ''childhood cancers'' and revise the definition of ''rare cancers,'' resulting in cancers of the brain, the pancreas, and the testes, and invasive cervical cancer becoming eligible for Program coverage (February 2014 IFR).[7] The Administrator addressed some of the public comments submitted on the three IFRs in the August 2016 NPRM; this final rule includes the Administrator's responses to the remainder of public comments on the IFRs.

IV. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347, as amended by Pub. L. 114–113), added Title XXXIII to the Public Health Service Act (PHS Act), establishing the WTC Health Program within HHS. The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

All references to the Administrator of the WTC Health Program (Administrator) in this notice mean the WTC Program Administrator, the Director of the National Institute for Occupational Safety and Health (NIOSH), or his or her designee. Section 3301(j) of the PHS Act authorizes the Administrator to promulgate such regulations as are necessary to administer the WTC Health Program.

V. Summary of Final Rule and Response to Comments

This rule adopts and finalizes all amendments to 42 CFR part 88 promulgated by the July 2011, March 2013, and February 2014 IFRs and proposed in the August 2016 NPRM. Amendments to the regulatory text in part 88 are finalized in accordance with the discussion provided in the August 2016 NPRM[8] and below, responding to public comments received on all four rulemakings. All public comments are available in the dockets for the four respective rulemakings.[9]

Section 88.1 Definitions

The Administrator revised pre-existing definitions and established new definitions for terms commonly used in the WTC Health Program in 42 CFR 88.1.

Comment: One July 2011 IFR commenter asked the Program to amend three definitions. The commenter asked that the definition of ''aggravating'' include any health condition that requires medical treatment ''more intensive than'' would have been required for such a condition in the absence of 9/11 exposure; that ''medically necessary treatment'' include treatment modalities and protocols developed specifically for children; and that ''New York City disaster area'' include 14th Street as the northern boundary.

Administrator's response: The term ''aggravating'' is defined in sec. 3306(1) of the PHS Act and cannot be expanded in the regulatory definition.

The Administrator also declines to amend ''medically necessary treatment'' because the medical treatment protocols developed by the Data Centers already include treatment modalities developed for children. The existing definition is sufficiently broad to include all types of patients treated by physicians affiliated with the Clinical Centers of Excellence (CCEs) or the Nationwide Provider Network (NPN). No changes are made to the regulatory text in response to these comments.

Finally, ''New York City disaster area'' is also defined in the PHS Act, at sec. 3306(7), and cannot be expanded in the regulatory definitions. No change is made to the regulatory text in response to the public comments.

The term ''designated representative'' is revised to clarify that an individual applying for enrollment in the WTC Health Program may designate a representative. A new definition of ''WTC,'' meaning ''World Trade Center,'' is added to this section; all existing definitions beginning with ''World Trade Center'' are revised accordingly to streamline the regulatory text.

Section 88.2 General Provisions

This section establishes the appointment process for an applicant's or WTC Health Program member's designated representative and the parameters of the representative's authority.

Comment: One July 2011 IFR commenter asked that the Program allow a parent or guardian to be the designated representative for a mentally impaired screening- or certified-eligible survivor.

Administrator's response: The Administrator agrees with the comment and has added a new paragraph (a)(7) to address the concern. In addition, paragraph (a)(6) has been revised to clarify that a parent or guardian of a minor applicant, as well as the parent or guardian of a screening-eligible or certified-eligible survivor who is a minor, may act on behalf of the minor.

Comment: One July 2011 IFR commenter asked that the Program offer reimbursement to members in the NPN for whom the cost of travel to the provider is less than 250 miles but nevertheless poses a financial burden, which is a barrier to care.

Administrator's response: PHS Act, sec. 3312(b)(4)(C) allows the Program to provide transportation expenses for medically necessary treatment through the NPN involving ''travel of more than 250 miles.'' The statutory language only authorizes reimbursement of travel expenses where travel exceeds 250 miles. No change is made to the regulatory text in response to this comment.

Section 88.3 Eligibility—Currently Identified Responders

No public comment was received on this section. No revisions are made to this section, although it is included in the regulatory text, below, for completeness.

Section 88.4 Eligibility Criteria—WTC Responders

This section establishes eligibility criteria for individuals who participated in response and recovery activities at the New York City area sites, at the Pentagon site, and at the Shanksville, Pennsylvania site.

Comment: One July 2011 IFR commenter asked the Program to develop eligibility criteria for responders engaged in the cleanup or demolition of buildings at or near Ground Zero, including 130 Liberty Street (Deutsche Bank) and 245 Greenwich Street (Fiterman Hall), which were heavily contaminated with WTC dust. In the case of those buildings

[5] 76 FR 38914 (July 1, 2011).

[6] 78 FR 18855 (Mar. 28, 2013.

[7] 79 FR 9100 (Feb. 18. 2014).

[8] *See* 81 FR 55086 at 55087–96.

[9] *See* July 2011 IFR, docket CDC–2011–0009; March 2013 IFR, docket CDC–2013–0002; February 2014 IFR, docket CDC–2014–0004; and August 2016 NPRM, docket CDC–2016–0072.

and others across Lower Manhattan, cleanup took place years after September 11, 2001 (*e.g.,* cleanup of the Deutsche Bank building began in 2007; Fiterman Hall in 2008). Workers exposed to the re-suspension of WTC dust caused by cleanup activities ''had the potential to become ill from those exposures and should be eligible under modified criteria for monitoring and treatment.''

Administrator's response: Workers who engaged in cleanup or demolition of buildings contaminated by WTC dust outside of the eligibility criteria identified in PHS Act, sec. 3311(a)(2) cannot be included in the eligibility criteria for WTC responders in § 88.4 without promulgating modified eligibility criteria by rulemaking. At this time, the Administrator is not aware of any scientific evidence to support such a rulemaking. No change is made to the regulatory text in response to this comment.

Comment: One March 2013 IFR commenter suggested that the addition of eligibility criteria for Pentagon and Shanksville responders is unnecessary because, the commenter believes, there were no real hazards at the Shanksville, Pennsylvania site, and the Pentagon site was quickly cleaned up.

Administrator's response: The Administrator does not agree with the sentiments expressed by this commenter. The eligibility criteria for Pentagon and Shanksville responders were developed after consideration of a report produced by NIOSH that reviewed published literature and other authoritative sources and consultations with participating responders from both sites.[10] The report summarized the results of environmental sampling at the Pentagon and Shanksville, Pennsylvania sites; estimated the length of time that each of the various responder groups participated in rescue, recovery, demolition, debris cleanup, and other related response activities; and identified the types of exposures potentially experienced by the site responders. Based on the report's findings, the Administrator found it reasonable to establish eligibility criteria for Pentagon and Shanksville responders.[11] No change is made to the regulatory text in response to this comment.

Section 88.5 Application Process—WTC Responders

This section describes the application process for individuals who participated in response and recovery activities at any of the three sites. Language from § 88.6(b), concerning notification of deficient applications, is moved into a new § 88.5(c). The word ''shall'' is replaced with ''must'' throughout the section, and ''WTC Program Administrator'' is replaced with ''WTC Health Program.''

Comment: One July 2011 IFR commenter asked that the Program contact an applicant by telephone to notify the individual of deficiencies in an application or supporting documentation.

Administrator's response: The Program makes every effort to contact applicants to correct any deficiencies in the application and conducts follow-up by telephone, mail, and/or email. No change is made to the regulatory text in response to this comment.

Section 88.6 Enrollment Decision—WTC Responders

This section describes the basis for enrollment and enrollment denial decisions and explains the Program's notification procedures. Language from § 88.6(b), concerning notification of deficient applications, is moved into a new § 88.5(c) where it is better placed. A sentence is added to paragraph (d) to clarify that the 60-day time period for Program enrollment decisions will be tolled during any days in which the applicant is correcting deficiencies, as in § 88.10(a).

Comment: Two July 2011 IFR commenters expressed concerns about the requirement regarding use of the terrorist watch list. Specifically, the commenters asked about information sharing protections and redress procedures, and stated that the terrorist watch list must not be used to harass, jeopardize, and/or deport immigrants.

Administrator's response: The Program is required to screen applicants against the terrorist watch list (*see* PHS Act, secs. 3311(a)(5) and 3321(a)(4)). Program applications as well as the System of Records Notice (SORN) for the WTC Health Program [12] state that information will only be disclosed to the Department of Justice (DOJ) and others for the limited purposes of ascertaining enrollment eligibility and qualification. HHS does not conduct terrorist watch list screening; the Program submits limited information collected from applications to DOJ, and DOJ's Terrorist Screening Center conducts the screening. DOJ is a signatory to the 2007 *Memorandum of Understanding on Terrorist Watchlist Redress Procedures* (MOU).[13] There is no change to the regulatory language in response to these comments.

Comment: One July 2011 IFR commenter asked that the Program notify the applicant of an enrollment decision within 30 calendar days of the Program's receipt of the application.

Administrator's response: The Program is required by statute to respond to applications within 60 calendar days of receipt of the application and makes every effort to respond in less time; average response time is approximately 4 weeks. Applicants can impact the length of the eligibility review process by submitting a complete application. No change is made to the regulatory text in response to this comment.

Section 88.7 Eligibility—Currently-Identified Survivors

No public comment was received on this section. No revisions are made to this section, although it is included in the regulatory text, below, for completeness.

Section 88.8 Eligibility Criteria—WTC Survivors

This section establishes eligibility criteria for individuals who do not meet the eligibility criteria for WTC responders.

Comment: One July 2011 IFR commenter asked that the language in § 88.8(a)(1)(iii), regarding ''extensive exposure,'' be interpreted liberally because ''this population may be least likely to have employment related documents or the ability to obtain them.''

Administrator's response: This eligibility criteria is based on section 3321(a)(1)(B)(iii) of the PHS Act, which requires extensive exposure to WTC dust for this specific population. However, the Program takes an applicant-favorable approach to eligibility criteria. There is no change made to the regulatory text in response to this comment.

Comment: One July 2011 IFR commenter pointed out that the

[10] Robert McCleery, *Summary of Evidence for Establishing Dates on which Cleanup of the Pentagon and Shanksville, Pennsylvania Sites of the Terrorist-Related Aircraft Crashes of September 11, 2001 Concluded,* Prepared for the Administrator, WTC Health Program, February 8, 2012, *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH–248/0248–041312-ShanksvilleResponse.pdf.*

[11] *See generally* 78 FR 18855.

[12] *Occupational Health Epidemiological Studies and EEOICPA Program Records and WTC Health Program Records,* HHS/CDC/NIOSH, Privacy Act System Notice 09–20–0147, *https://www.gpo.gov/fdsys/pkg/FR-2011-06-14/html/2011-14807.htm.*

[13] *See* DOJ press release, *Federal Inter-Agency Partners Sign Government-wide Watchlisting Redress MOU,* October 24, 2007, *https://www.justice.gov/archive/opa/pr/2007/October/ustsc-102407.html.*

regulatory language in § 88.8(a)(1)(iv)(C) implies that the individual must have lived in the New York City disaster area residence from September 11, 2001 through May 31, 2003 but asserts that the Lower Manhattan Development Corporation Residential Grant Program did not begin until August 2002 and participation requirements state that ''renters must have leases commencing on or after June 1, 2001 and on or prior to May 31, 2003. Owners must purchase apartments on or prior to May 31, 2003.'' The commenter requests that the text of the regulation indicate that the individual was in residence for part of that period.

Administrator's response: The Administrator appreciates the comment, however, the language in this section mirrors the eligibility language in PHS Act, sec. 3321(a)(1)(B)(iv). No change is made to the regulatory text in response to this comment.

Comment: Similar to comments made on § 88.4, one July 2011 IFR commenter suggested that the section be amended to include survivors who conducted cleanup or demolition of buildings at or near Ground Zero which were heavily contaminated with WTC dust. In some cases, cleanup took place years after September 11, 2001 and workers were exposed to the re-suspension of WTC dust caused by cleanup activities.

Administrator's response: As discussed above, workers who engaged in cleanup or demolition of buildings contaminated by WTC dust outside of the eligibility criteria identified in PHS Act, sec. 3321(a)(1)(B) cannot be included in the eligibility criteria for WTC survivors in § 88.8 without promulgating modified eligibility criteria by rulemaking. At this time, the Administrator is not aware of any scientific evidence to support such a rulemaking. There is no change made to the regulatory text in response to this comment.

Comment: One July 2011 IFR commenter asked the Program to establish modified eligibility criteria for the ''full cohort of affected children,'' including those who were exposed in utero (mothers who lived or worked in the New York City disaster area); those exposed to WTC dust brought home by responder parents; those born after September 11, 2001, to responder or survivor parents and suffering mental health impacts due to the parents' WTC-related mental health condition; and those born to exposed responders or survivors if evidence of environmental reproductive health impacts is available.

Administrator's response: Individuals who were children at the time of the terrorist attack in New York City or its aftermath may be enrolled WTC survivors if they meet the eligibility criteria for screening-eligible survivors. Children who were exposed in-utero, who experienced 'take-home' exposures, who suffer from mental health conditions resulting from their parents' WTC-related mental health conditions, and who suffer from health effects resulting from parental exposures were not identified in the PHS Act's eligibility criteria for survivors. To the extent that language could be added to the eligibility criteria to permit some or all such cohorts of children to be enrolled as WTC survivors under § 88.8, the Administrator would be required to promulgate modified eligibility criteria. The Administrator is not contemplating such modified criteria at this time. Developmental disorders cannot be added to the List without rulemaking supported by scientific or medical evidence, pursuant to the procedures established in § 88.16 for adding new WTC-related health conditions to the List. There is no change made to the regulatory text in response to this comment.

Section 88.9 Application Process—WTC Survivors

This section describes the application process for individuals in the New York City disaster area who did not participate in response and recovery activities.

Comment: One July 2011 IFR commenter suggested that the application process should allow statements written under penalty of perjury from fellow workers, neighbors, and fellow students or teachers, and allow a sworn statement of facts by the applicant before a notary if no other documentation is available.

Administrator's response: The Program accepts a wide range of documentation to verify an applicant's status. Statements from co-workers and others used as evidence of an individual's presence in the New York City disaster area are contemplated by § 88.9(a)(1), which has been slightly revised for clarity by replacing a comma with a semi-colon, to state that ''[d]ocumentation may include but is not limited to: Proof of residence, such as a lease or utility bill; attendance roster at a school or daycare; or pay stub, other employment documentation, or written statement, under penalty of perjury, by an employer indicating employment location during the relevant time period; or similar documentation.'' ''Similar documentation'' could include written statements from co-workers and fellow students or neighbors. The types of written statements suggested by the commenter are among those that are routinely accepted by the Program. This section is not changed in response to this comment.

A new paragraph (a)(3), comprising language concerning the notification of deficiencies in an application, is moved from § 88.10(a). ''Shall'' is replaced with ''must'' throughout the section, and ''WTC Program Administrator'' is replaced with ''WTC Health Program'' in paragraph (b).

Section 88.10 Enrollment Decision—Screening-Eligible Survivors

This section describes the basis for enrollment as a screening-eligible survivor and enrollment denial decisions, and explains the Program's notification procedures.

Comment: One July 2011 IFR comment asked that the Program shorten the time frame for notifying applicants of screening-eligible status from 60 calendar days to no more than 30 days from NIOSH's receipt of the application. The commenter also asked that the Program use telephone outreach to follow up with applicants when documentation is absent or deficient.

Administrator's response: The Program is required by statute to respond to applications within 60 calendar days of receipt of the application and makes every effort to respond in less time; the average response time is approximately 4 weeks. Applicants can impact the length of the eligibility review process by submitting a complete application. The Program makes every effort to contact applicants to correct any deficiencies in the application, and conducts follow-up by telephone, mail, and/or email. This section is not changed in response to this comment.

Language in paragraph (a) concerning notification of deficiencies in an application is moved to § 88.9(a)(3).

Section 88.11 Initial Health Evaluation for Screening-Eligible Survivors

This section describes the initial health evaluation process for screening-eligible survivors.

Comment: One August 2016 NPRM commenter shared a concern that the language may permit survivors to obtain an initial health evaluation and treatment from any CCE.

Administrator's response: The language in this section is essentially unchanged from the original language of § 88.10(d)(1), which reads ''A WTC Health Program Clinical Center of Excellence or a member of the nationwide network provider [sic] will provide the screening-eligible survivor

an initial health evaluation to determine if the individual has a WTC-related health condition. . . .'' Although the names are changed to acronyms for the sake of brevity and clarity, the Administrator's intent is unchanged and the language in this section continues to mean that an initial health evaluation will be provided by the Program. No change is made to the regulatory text in response to this comment.

Section 88.12 Enrollment Decision—Certified-Eligible Survivors

This section describes the basis for enrollment as a certified-eligible survivor and enrollment denial decisions, and explains the Program's notification procedures.

Comment: One July 2011 IFR commenter asked that the Program specify a time frame for notification of certified-eligible status, no more than 30 days from receipt by the Program of a physician determination.

Administrator's response: Although the WTC Health Program makes every effort to provide certification decisions in a timely manner, the establishment of a deadline for notification of certified-eligible status or a deadline for the Program's decision whether to certify a WTC-related health condition (pursuant to § 88.18) could impede the Program's ability to conduct a thorough analysis of the member's health condition and exposure history. This could especially be the case where the Administrator has added a health condition to the List but the Program has not yet established implementation guidelines. Moreover, a deadline may create confusion if stakeholders believe that a certification request not granted or denied within the period is deemed to be either granted or denied. No change is made to the regulatory text in response to this comment.

Section 88.13 Disenrollment

This section clarifies the process for disenrolling a member from the WTC Health Program.

Comment: One August 2016 NPRM commenter agreed that the disenrollment (and decertification, pursuant to § 88.18) provisions are important to ''ensure program integrity.''

Comment: One August 2016 NPRM commenter stated that there is no language included in this section to address grandfathered members (those enrolled pursuant to §§ 88.3 and 88.7) and stated the opinion that such members should be ''immune from disenrollment.''

Administrator's response: It is important to the integrity of the WTC Health Program to maintain the authority to disenroll any member if evidence indicates that the enrollment was based on incorrect or fraudulent information. The provisions in paragraph (a)(1) only apply to members enrolled under the eligibility criteria in §§ 88.4 or 88.8 (which do not include grandfathered members) and permit disenrollment where there is insufficient proof of meeting the eligibility criteria required by those sections. The provisions in paragraph (a)(2) apply to all members (including grandfathered members) and permit disenrollment where the enrollment was based on incorrect or fraudulent information. No change to the regulatory text is made in response to this comment.

Section 88.14 Appeal of Enrollment or Disenrollment Decision

This section establishes procedures for the appeal of a WTC Health Program decision to deny enrollment of an applicant or disenroll a Program member.

Comment: One August 2016 NPRM commenter agreed that the proposed extension of the deadline for filing an appeal, from 60 to 90 days, is an improvement but is still too short a time frame for obtaining necessary records. According to the commenter, the deadline for filing an appeal should be extended to at least 4 months (120 days).

Administrator's response: The Administrator agrees and extends the deadline for appeal submission to 120 days. The regulatory text in paragraph (b)(1) is amended accordingly.

Comment: One August 2016 NPRM commenter requested that the Program allow applicants and members to make an oral statement during the appeal, as is allowed in § 88.21.

Administrator's response: Although applicants and members are allowed to submit new information in support of Program enrollment denial or disenrollment appeals, the Administrator has determined that, in the context of enrollment and disenrollment appeals, the administrative burden associated with oral statements outweighs the benefits. The factual bases and documentation requirements for enrollment and disenrollment decisions can be more efficiently considered through a paper-based review. No changes to the regulatory text are made in response to this comment.

Comment: One July 2011 IFR commenter asked that the Program indicate from where the Federal Official will be drawn and what expertise that individual may have with the monitoring and treatment of WTC-related health conditions.

Administrator's response: The Federal Officials appointed to hear appeals are chosen from Centers, Institutes, or Offices within the Centers for Disease Control and Prevention. They have relevant knowledge but do not work within the WTC Health Program. No change is made to the regulatory text in response to this comment.

Comment: One August 2016 NPRM commenter stated that the NPRM provides no justification for having the Administrator make final decisions on appeals and appears unfair to the claimant making the appeal.

Administrator's response: To clarify the processes by which certain decisions are made within the Program, language throughout Part 88 is changed to indicate that some decisions are made directly by the Administrator, while he has designated WTC Health Program staff to make other Program decisions, such as certifications. In the case of enrollment or disenrollment appeals, the Administrator is reviewing decisions made by Program staff. The Program finds it important to shift the final appeal decision-making authority to the Administrator because the final decision on eligibility appeals (and the certification and treatment authorization appeals in § 88.21) should be made by the Administrator, who has a thorough understanding of the WTC cohorts and matters related to eligibility and exposures and is best able to apply the laws, policies, and procedures governing the WTC Health Program. No change is made to the regulatory text in response to this comment.

Comment: One August 2016 NPRM commenter expressed concern that some appeals may take longer than the average 45 days, and recommended a final decision deadline of 120 days, with a contingency for justifying longer delays based on specific circumstances.

Administrator's response: As discussed above, the establishment of a deadline for notification of a decision such as a final appeal decision could impede the Program's ability to conduct a thorough review of the prospective member's application and documentation of eligibility. The section is not changed in response to this comment.

Section 88.15 List of WTC-Related Health Conditions

This section contains the List previously placed in § 88.1 Definitions. No public comments were received on this section and no substantive revisions are made to the text. Some punctuation

is corrected and the names of two types of cancer are pluralized.

Section 88.16 Addition of Health Conditions to the List of WTC-Related Health Conditions

This section establishes the process by which interested parties may petition the Administrator to add a health condition to the List. No public comments were received on this section and no revisions are made to the text.

Section 88.17 Physician's Determination of WTC-Related Health Conditions

This section establishes the basis for a CCE or NPN-affiliated physician's determination that a member has a health condition that can be certified. No public comments were received on this section and no revisions are made to the text.

Section 88.18 Certification

This section establishes that the WTC Health Program will promptly assess physician determinations submitted by a CCE or NPN-affiliated physician and, if the Program concurs with the determination and decides that a health condition is a WTC-related health condition or a health condition medically associated with a WTC-related health condition, will certify the condition as eligible for coverage under the WTC Health Program.

Comment: One August 2016 NPRM commenter recommended the establishment of a deadline for Program decisions concerning the certification of WTC-related health conditions.

Administrator's response: As discussed above with regard to certified-eligible status notification, the establishment of a deadline for a final appeal decision could impede the Program's ability to conduct a thorough analysis of the member's health condition and exposure history. Certification decisions may be particularly time-consuming to resolve if a condition has been added to the List but the Program has not yet established implementation guidelines. Moreover, a deadline may create confusion if stakeholders believe that a certification request not granted or denied within the period is deemed granted. The section is not changed in response to this comment.

Comment: Four July 2011 IFR commenters stated their belief that PHS Act, sec. 3312(b)(2) permits certification of individual primary conditions determined to be WTC-related that are not on the List and the regulatory text should be revised accordingly.

Administrator's response: The Administrator has reviewed PHS Act, sec. 3312(b)(2)(A)–(B) and finds that the meaning of the text ''determination based on medically associated WTC-related health conditions'' and ''if a . . . WTC responder has a health condition described in subsection (a)(1)(A) that is not in the list in subsection (a)(3) but which is medically associated with a WTC-related health condition . . .'' is plain—the medically associated health condition must be related to a health condition listed in sec. 3312(a)(3). The language of the enacted statute does not permit physicians to recommend a health condition for certification that is not causally related to a listed WTC-related health condition. The Administrator finds the language of the Act is clear, and the legislative history is consistent with the Administrator's interpretation. While the language in the introduced bill did give physicians the authority requested by commenters, subsequent amendments to the bill changed the language and the intent of the enacted Act is different from that which was introduced. The regulatory text in this section is not changed in response to these comments.

Section 88.19 Decertification

This section clarifies the process for decertification of a WTC-related health condition or health condition medically associated with a WTC-related health condition.

Comment: One August 2016 NPRM commenter asked that language be added to this section ''to clarify that a member whose health condition has been decertified retains the right to seek recertification'' in some circumstances. For example, where new information about the member's exposure or evidence of association between 9/11 exposure and the decertified condition was previously not considered by the Program.

Administrator's response: In addition to a right to appeal a WTC Health Program decision to decertify a certified WTC-related health condition, a member who believes the decision was made in error may ask the CCE or NPN physician to resubmit the certification request; the physician may include new information to support the case for certification. The Administrator finds it unnecessary to revise the regulatory text in § 88.19(b) and may address this matter administratively.

Comment: Similar to a comment on § 88.13, one August 2016 NPRM commenter expressed concern that there is no language in this section addressing grandfathered members (those enrolled pursuant to §§ 88.3 and 88.7), who should be ''immune from decertification.''

Administrator's response: It is important to the integrity of WTC Health Program that any health condition may be decertified if the available evidence indicates that the certification is based on inadequate exposure or was otherwise certified in error. This includes grandfathered Program members. The section is not changed in response to this comment.

Section 88.20 Authorization of Treatment

This section describes the provision of medically necessary treatment.

Comment: One July 2011 IFR commenter asked the Program to use a variety of mental health modalities to treat mental health conditions. The commenter recommended that such treatment must be culturally sensitive and allow patients to be treated by private, community-based mental health professionals.

Administrator's response: The Program allows a variety of treatment modalities to address various diagnoses, especially posttraumatic stress disorder (PTSD) and other mental health conditions. Many of the practitioners affiliated with CCEs or the NPN have community-based mental health practices where they see Program members and should be able to render culturally-sensitive care. No change is made to the regulatory text in response to this comment.

Comment: One August 2016 NPRM commenter recommended the addition of flexibility to the regulatory text in paragraph (b) to ''accommodate complex care situations'' like cancer treatment or organ transplant in medical protocols developed by the Data Centers.

Administrator's response: The Program finds that the regulatory text in paragraph (b) is sufficiently broad to allow for the development of medical protocols of any appropriate complexity. No change is made to the regulatory text in response to this comment.

Comment: One August 2016 NPRM commenter expressed concern that a strict interpretation of the language in paragraph (c) requires the Administrator personally to authorize treatment pending certification before any treatment is provided (except for emergency care). According to the commenter, ''[g]iven the growing length of time between submission of certification requests and the receipt of decisions, a strict interpretation of this language would be detrimental to member wellbeing.''

Administrator's response: The Administrator agrees with the commenter and changes the regulatory text to replace ''Administrator of the WTC Health Program'' with ''WTC Health Program.''

Section 88.21 Appeal of Certification, Decertification, or Treatment Authorization Decision

This section establishes that a WTC Health Program member or the designated representative of such a member may appeal the Program's decision to deny certification of a health condition as WTC-related or medically associated with a WTC-related health condition, decertify a WTC-related health condition or medically associated health condition, or deny authorization of treatment for a certified health condition.

In response to public comment on § 88.14, concerning appeal of enrollment decisions, the Administrator agreed to extend enrollment appeal submission deadlines to 120 days. To maintain parity with that process, the deadline for the submission of appeals of certification, decertification, and treatment authorization decisions is also extended to 120 calendar days.

Section 88.24 Coordination of Benefits and Recoupment

This section addresses the matter of coordination of benefits, including recoupment from workers' compensation settlements.

Comment: One August 2016 NPRM commenter stated that the language in paragraph (e) ''does not address the growing use of restricted networks by health insurers which can make it very difficult for a participant to find a provider in their network for the complicated specialty treatment required for their medical condition. Would they be forced to go to an in-network provider which is not in the WTC program?''

Administrator's response: The Program is aware of the concern raised by the commenter, especially in the cancer care context. In very rare circumstances, the Program may allow for members who require ''specialty treatment,'' such as cancer care and transplants, to receive care from providers outside of their insurance networks. Otherwise, the CCE or NPN will coordinate care through providers within the members' insurance networks. The Program may provide more specific administrative guidance on this issue, as necessary. No changes are made to the regulatory text in response to this comment.

General Comments

Comment: One July 2011 IFR commenter asked that the Part 88 regulations address outreach, and include radio, TV, newspaper advertising, community meetings; fund effective, culturally competent outreach; partnership with community-based social service providers; re-fund de-funded outreach programs; and offer in-person assistance for completing application for non-English speakers and the mentally impaired.

Administrator's response: Section 3303 of the PHS Act authorizes the Administrator to conduct the following outreach and education activities: establish a public Web site with information about the Program; hold meetings with potentially eligible populations; develop and disseminate outreach and education materials about the Program; and establish telephone information services. The Act further specifies that these activities will be conducted in a manner intended to reach all affected populations and include materials for culturally and linguistically diverse populations. The WTC Health Program meets these requirements by funding outreach and education activities (including culturally appropriate and diverse programs) to be conducted by the CCEs as well as community and labor groups. These groups are able to provide face-to-face enrollment assistance. Furthermore, the WTC Health Program has a New York Field Coordinator who also conducts outreach and provides application assistance. No change is made to Part 88 in response to this comment.

VI. Regulatory Assessment Requirements

A. Executive Order 12866 and Executive Order 13563

Executive Orders 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, and public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This final rule has been determined to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

This final rule includes changes proposed in the August 2016 NPRM and final revisions made in response to public comment and to clarify the Program's intent; it also finalizes three IFRs issued in July 2011, March 2013, and February 2014, respectively. This final rule includes revisions to §§ 88.14 and 88.21 (enrollment and medical appeals) and § 88.16 (addition of health conditions) that will result in necessary updates to several existing WTC Health Program policies; novel regulatory provisions in § 88.13 (disenrollment), § 88.19 (decertification), and § 88.23 (reimbursement appeals) will require the revision of existing policies or development of new policies. The Administrator estimates that amending the existing *Policy and Procedures for Handling Submissions and Petitions to Add a Health Condition to the List of WTC-Related Health Conditions* and the Web page containing frequently asked questions regarding appeals, and developing new disenrollment, decertification, and reimbursement appeal policies will require approximately 568 hours of staff time. The average WTC Health Program staff member responsible for updating these policies is a GS 14–5, earning $125,221 annually, pursuant to OPM's Salary Table 2016–DCB (Washington DC), or $75.25 hourly, adjusted to include benefits. Accordingly, the revisions to Part 88 finalized in this final rule are expected to cost the WTC Health Program approximately $42,742 and that amount is included in the administrative costs discussed below. This rulemaking is not expected to change the number of applicants or Program members; the Administrator has not identified any other potential impacts associated with this final rule.

In addition to the costs associated with the August 2016 NPRM, this rule also updates the regulatory impact analyses for the July 2011, March 2013, and February 2014 IFRs, which are all finalized in this action. In the original cost analysis conducted for the Part 88 WTC Health Program regulations,[14] HHS estimated the aggregate cost of medical monitoring and treatment to be provided and administrative expenses associated with implementing the WTC Health Program for a period of 5 years. HHS developed those estimates for the health conditions included for Program coverage in sections 3312 and 3321 of the PHS Act, using data from the health programs that were in place for WTC responders and survivors prior to the establishment of the WTC Health Program. Since that original July 2011 rulemaking and cost analysis, the WTC Health Program has expanded the list of

[14] July 2011 IFR, 76 FR 38914 at 38921.

health conditions eligible to receive coverage in the Program through regulations, as permitted by section 3312(a)(6) of the PHS Act; in addition to the original statutory conditions of specified aerodigestive disorders, mental health conditions, and, for certain responders, musculoskeletal disorders, the WTC Health Program now also provides coverage for numerous types of cancer, new-onset chronic obstructive pulmonary disease (COPD), and WTC-related acute traumatic injury. Data used to update this regulatory impact analysis include data derived from WTC Health Program health services claims data as well as administrative and infrastructure cost data collected between FY 2012, the first full year for which data are available, and the end of FY 2015, the last full year for which data are available.

The Program estimates that total cumulative costs associated with the WTC Health Program over the next 10 years will be $4,223,209,653, undiscounted (from $2,874,481,628 at 7 percent discount rate to $3,553,658,528 at 3 percent discount rate). The cost of the rule in FY 2025 is estimated to be $522,307,538 (present value between $265,514,667 and $388,645,860, at 7 percent and 3 percent discounts rates, respectively).[15]

TABLE 1—SUMMARY OF WTC HEALTH PROGRAM COSTS *

	FY 2015	FY 2025	Cumulative FY 2016–2025
Total Costs			
Undiscounted	$240,571,579	$522,307,537	$4,223,209,653
7% discount rate		265,514,667	2,874,481,628
3% discount rate		388,645,860	3,553,658,528
Program Administration			
Undiscounted	96,414,964	134,485,132	1,194,966,221
7% discount rate		68,365,421	825,867,165
3% discount rate		100,069,568	1,012,191,361
Medical Monitoring and Treatment			
Initial health evaluation (survivors only):			
Undiscounted	887,401	2,387,362	18,641,297
7% discount rate		1,213,614	12,610,885
3% discount rate		1,776,421	15,644,794
Annual medical monitoring:			
Undiscounted	17,583,046	47,303,408	369,360,390
7% discount rate		24,046,654	249,873,253
3% discount rate		35,198,178	309,987,399
Diagnostic evaluation/cancer screening:			
Undiscounted	13,131,585	35,327,709	275,850,234
7% discount rate		17,958,816	186,613,392
3% discount rate		26,287,133	231,508,572
Medical Treatment:			
Undiscounted	112,554,583	302,803,927	2,364,391,511
7% discount rate		153,930,162	1,599,516,932
3% discount rate		225,314,560	1,984,326,403
All Medical Monitoring and Treatment			
Undiscounted	144,156,615	387,822,405	3,028,243,432
7% discount rate		197,149,246	2,048,614,463
3% discount rate		288,576,292	2,541,467,168
Prior Rulemaking Cost Estimates			
Cancer, September 2012 final rule (non-add)			Estimated cost per year FY 2013–2016 ($mil) 12.5–33.3.
Pentagon/Shanksville responders, March 2013 IFR (non-add)			Estimated cost per year FY 2013–2016 ($mil) .9–3.2.
Prostate cancer, September 2013 final rule (non-add)			Estimated cost per year FY 2014–2016 ($mil) 3.5–7.0.
Brain, invasive cervical pancreatic, testicular cancers, February 2014 IFR (non-add)			Estimated cost per year FY 2014–2016 ($mil) 2.2–5.0.
COPD and acute traumatic injury, July 2016 final rule (non-add)			Estimated cost per year FY 2016–2019 ($mil) 4.6–5.7.

* Due to rounding, some totals may not correspond with the sum of the separate figures.

[15] These estimates represent only a 60 percent increase over the cost estimates provided in the July 2011 IFR, where the Program found that costs in 2015 could range from $106,800,000 to $151,000,000. That estimate was based not on WTC Health Program experience, but on health programs that pre-dated the current WTC Health Program. The estimate in the July 2011 IFR was carried out until only FY 2015; the current analysis projects Program costs through FY 2025 based on WTC Health Program experience to date.

Enrollment

As of the end of FY 2015, WTC Health Program membership included 64,008 WTC responders and 9,144 screening- and certified-eligible survivors. Based on enrollment numbers since FY 2012, the first full year for which data are available, responders (including Pentagon and Shanksville responders) enroll at an approximate rate of 2,087 per year, screening- and certified-eligible survivors at an approximate rate of 1,077 per year. Table 2 displays the past annual enrollment of members, the projected enrollment over the 10 years between FY 2016 and FY 2025, and the projected total number of members by FY 2025.[16]

TABLE 2—WTC HEALTH PROGRAM ANNUAL ENROLLMENT

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016–2025	Total members by 2025
WTC responders	886	1,539	3,096	2,205	20,873	84,545
Screening- and certified-eligible survivors	1,017	736	1,451	1,170	10,770	19,809
Total	1,903	2,275	4,547	3,375	31,643	104,354

Administrative Costs

The annual cost to the WTC Health Program of conducting administrative functions was approximately $96,414,964 in FY 2015. Given the aggregate rate of enrollment of WTC responders and screening- and certified-eligible survivors, a rise in operations costs by 1.7 percent and a rise in infrastructure costs of 3.3 percent, annual administrative costs for FY 2025 are expected to be $134,485,132. Such costs include program management, enrollment, certification of health conditions, pre-authorization of medical care, payment services, administration of appeals, education and outreach, administration of the advisory and steering committees, and infrastructure costs for the CCEs/NPN.

Infrastructure costs for the CCEs/NPN include the retention of participants, case management, medical review, benefits counseling, quality management, data transfer, interpreter services, and assisting with the development of treatment protocols.

TABLE 3—WTC HEALTH PROGRAM ADMINISTRATIVE COSTS

[Undiscounted]

	FY 2015	FY 2025
Administrative costs (not including CCE/NPN infrastructure—see below)	$39,672,004	$57,193,270
CCE/NPN infrastructure cost	56,742,690	77,291,862
Total	96,414,694	134,485,132

Costs of Medical Monitoring and Treatment

In FY 2015, the total cost to the WTC Health Program for medical monitoring and treatment was $144,156,615, and the breakdown by type of service is shown in Table 1. Initial health evaluations are for WTC screening-eligible survivors only. Diagnostic evaluation and cancer screening is for WTC screening- and certified-eligible survivors and WTC responders. The other two categories of services are for WTC certified-eligible survivors and WTC responders. These costs are based on claims paid during FY 2015. The FY 2015 costs do not include costs associated with monitoring and treatment of new-onset COPD and WTC-related acute traumatic injury because the rulemaking adding those conditions to the List was not completed until July 2016.[17]

For FY 2025, the WTC Health Program estimated the total cost for all health care service categories based on linear cost projections from prior fiscal years, with an adjustment (increase) to account conservatively for statistical uncertainty in the estimate. Also included in the estimate are increases for the treatment and monitoring of new-onset COPD and WTC-related acute traumatic injury, added to the List in July 2016. The FY 2025 total for all health care service categories is $387,822,406. This estimate accounts for an increase in enrollment, more members receiving health care benefits, higher-cost care related to cancer and complications of other illnesses, and general medical care cost increases. In order to determine the breakout by health care service category for FY 2025, the WTC Health Program calculated the percentage of the total cost in FY 2015 for each category and applied those percentages to the total estimate for FY 2025.

Examination of Benefits

Through FY 2015, the last full year for which Program data are available, 35,523 members (49 percent) have been certified for at least one WTC-related health condition. The number of certifications of WTC-related health conditions identified in the categories of health conditions included in the List of WTC-Related Health Conditions is in Table 4, below. Based on the projected FY 2025 enrollment number of 104,354 and an increase of 3 percent annually of the number of members who are estimated to be certified, there would be 158,415 certifications for 68,103 Program members in FY 2025.

[16] These enrollment numbers do not include grandfathered members, the majority of whom were automatically enrolled in the Program in July 2011.

[17] 81 FR 43510 (July 5, 2016).

TABLE 4—NUMBER OF CERTIFIED WTC-RELATED HEALTH CONDITIONS AMONG WTC HEALTH PROGRAM MEMBERS

Health condition category	FY 2015	FY 2025
Aerodigestive disorders	58,782	112,694
Mental health conditions	18,868	36,173
Musculoskeletal disorders	535	1,026
Cancers	4,445	8,522
Total certifications	82,630	158,415

An evaluation of the health and quality of life improvements associated with medical treatment of several of the most commonly-certified health conditions is based on the prevalence of certified WTC-related health conditions. Quality-adjusted life year (QALY) is a common metric of expected treatment effectiveness for the health conditions evaluated. For the purpose of this evaluation, the Administrator assumes that each health condition will continue to be represented among new Program members at the same rate at which it occurs in current members. The health benefits provided by the WTC Health Program are compared with the effect of no Program at all.

The Administrator assumes that WTC Health Program members receive the best care available, as CCE and NPN providers are experts in treating the types of health conditions on the List eligible for certification. In order to compare the benefits provided by the WTC Health Program to a scenario with no WTC Health Program, the Administrator further assumes that the 9/11-exposed population of responders and survivors would instead receive some but not optimal treatment for their health conditions. Accordingly, the estimated benefits (QALYs) represent the incremental improvement in health that WTC Health Program members can expect from receiving the optimal treatment provided by the CCEs and NPN versus standard treatments that are commonly received outside of the Program.

Below are summarized QALY estimates for morbidity improvements for aero-digestive conditions, PTSD and depression, and cancer.[18]

Aerodigestive Disorders

- Gastroesophageal Reflux Disorder (GERD)

In the July 2011 IFR, an estimated 0.012 QALYs were gained per year per patient under treatment for GERD in the Program compared with patients treated outside the Program. Multiplying the WTC Health Program's GERD population for each year during FY 2016–2025 by 0.012 results in 3,311 total undiscounted QALYs gained. Discounting future health benefits at 3 and 7 percent results in 2,781 and 2,244 total QALYs gained, respectively.

- Chronic Rhinosinusitis and other Upper Respiratory Diseases

In the July 2011 IFR, an estimated 0.0145 QALYs were gained per year per patient under treatment for chronic rhinosinusitis and other upper respiratory diseases in the Program compared with patients treated outside the Program. Assuming the same gain is achieved for patients treated for other upper respiratory diseases, treating patients for all upper respiratory diseases would result in 4,877 total undiscounted QALYs gained. Discounting future health benefits at 3 and 7 percent results in 4,095 and 3,304 total QALYs gained, respectively.

- Asthma

In the July 2011 IFR, an estimated 0.029 QALYs were gained per year per patient under treatment for asthma in the Program resulting in 6,002 total undiscounted QALYs gained. Discounting future benefits at a rate of 3 percent and 7 percent results in 5,040 and 4,066 total QALYs, respectively.

- Chronic Obstructive Pulmonary Disease (COPD)[19]

In the July 2011 IFR, an estimated 0.077 QALYs were gained per year per patient under treatment in the program for WTC-exacerbated COPD in the Program resulting in 3,320 total undiscounted QALYs gained. Discounting future health benefits at 3 and 7 percent results in 2,788 and 2,249 total QALYs gained, respectively.

- Reactive Airways Dysfunction Syndrome (RADS) and other Aerodigestive Conditions

In the July 2011 IFR, an estimated medical treatment similar to that for asthma was discussed for patients suffering from RADS. Assuming that treating one patient results in 0.029 QALYs gained and that treating all other aerodigestive conditions not examined above would also result in 0.029 QALYs gained would result in a total of 4,877 undiscounted QALYs gained. Discounting future health benefits at 3 and 7 percent, results in 4,094 and 3,204 total QALYs gained, respectively.

Posttraumatic Stress Disorder (PTSD) and Depression

In the July 2011 IFR, an estimated 0.013 QALYs were gained per year per patient under treatment for PTSD and depression in the Program resulting in a total of 3,598 undiscounted QALYs gained. Discounting future health benefits at 3 and 7 percent results in 3,022 and 2,438 total QALYs gained, respectively.

Cancer

It was assumed that all patients in FY 2016–2025 will live at a health-related quality of life level similar overall to that reported in Cutler and Richardson[20] and Tengs and Wallace[21] for patients with cancer. A QALY for a person living with cancer, without specifying treatment, stage of disease, or other specifics is approximately 0.7, with 1 representing perfect health and 0 death. For comparison, Sullivan and Ghushchyan[22] estimated the health-related quality of life for the age group 50–69 in the general U.S. population at 0.827.

[18] Estimates for mental disorders other than PTSD and depression and for musculoskeletal disorders are not provided because these conditions only account for approximately 9 percent of the total certifications; estimates for WTC-related acute traumatic injuries are not included because the FY 2015 data used to conduct this analysis pre-dates the July 2016 rulemaking that added WTC-related acute traumatic injuries to the List.

[19] Data used to develop QALYs for COPD were derived from FY 2015 Program data regarding WTC-exacerbated COPD; estimates for new-onset COPD are not included because the FY 2015 data pre-dates the addition of new-onset COPD to the List in the July 2016 rulemaking.

[20] David Cutler and Elizabeth Richardson, *Your Money and Your Life: The Value of Health and What Affects It,* in *Frontiers in Health Policy Research, vol. 2,* 99–132 (National Bureau of Economic Research, 1999).

[21] Tammy Tengs and Amy Wallace, *One-Thousand Health-Related Quality of Life Estimates,* Med Care 2000;38(6):583–637.

[22] Patrick Sullivan and Vahram Ghushchyan, *Preference-Based EQ–5D Index Scores for Chronic Conditions in the United States,* Med Decis Making 2006;26:410–420.

Using the expected number of prevalent cancer cases for FY 2016–2025 and published information in Tengs and Wallace on the health-related quality of life of cancer patients who respond to treatment for their cancer, a rough estimate of 0.06 for the increase in patients' quality of life was estimated for cancers treated in the WTC Health Program compared to those not treated in the Program.[23] Using the prevalence of cancers and an assumed difference in health-related quality of life of 0.06 among patients treated in the Program and those not treated in the Program for the years FY 2016–2025 results in a total of 3,913 undiscounted QALYs gained. Discounting future benefits at 3 percent and 7 percent, results in 3,285 and 2,651 total QALYs gained, respectively.

In summary, available information indicates the WTC Health Program is likely to provide substantial improvements in health to responders and survivors. The QALY estimates discussed above and summarized and annualized in Table 5 below are illustrative of these benefits.

TABLE 5—POTENTIAL QALYS GAINED FROM THE WTC HEALTH PROGRAM TREATMENT OF SELECT WTC-RELATED HEALTH CONDITIONS: FY 2016–2025 SUMMARY

Health condition	Total undiscounted QALYs gained by treatment	Present value of QALYs gained by treatment discounted at 7%	Present value of QALYs gained by treatment discounted at 3%
Aerodigestive disorders	17,510	11,863	14,704
PTSD & Depression	3,598	2,438	3,022
Cancers	3,913	2,651	3,285
Total	25,021	16,952	21,011
Annualized	2,502	2,414	2,463

The cost analysis above is subject to a number of limitations, some but not all of which have been identified by the Program. The enrollment, administrative, and medical monitoring and treatment cost estimates are based on historical cost experience from the first full year of the WTC Health Program (FY 2012) to the end of FY 2015 and do not anticipate the costs of WTC-related health conditions added to the List in the future. The annual rate of increase takes into account the growth of the Program's membership based on enrollment data from the start of the Program to present and does not consider natural population mortality and mortality due to the WTC-related health conditions. The medical monitoring and treatment cost estimates are based on a combination of linear regression analysis of aggregate medical costs and adjustments for factors described above.

The Program has also identified some, but not all, limitations in deriving the health benefits estimate. Some new Program members, if they have not received treatment for a certified WTC-related health condition prior to enrollment, may present in worse health and may benefit less from medical treatment than members who received more timely treatment in the Program. Furthermore, many Program members may have more than one concurrent certified WTC-related health condition for which they are receiving treatment in the Program, which can impact the effectiveness of medical treatment for any given condition.

This rule does not interfere with State, local, or Tribal governments in the exercise of their governmental functions.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. The Administrator certifies that this proposed rule has ''no significant economic impact upon a substantial number of small entities'' within the meaning of the RFA.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. This final action continues to impose the same information collection requirements as under the July 2011, March 2013, and February 2014 IFRs, including the submission of the following forms and other information listed in the table below.

Data collection and recordkeeping requirements for the WTC Health Program are approved by OMB under ''World Trade Center Health Program Enrollment, Appeals & Reimbursement'' (OMB Control No. 0920–0891, exp. September 30, 2018). HHS has determined that substantive changes are needed to the information collection already approved by OMB. Accordingly, HHS has published a notice of the proposed changes to the existing approved information collection and invites comment from the public during the 60-day comment period. The 60-day notice, published in the **Federal Register** on October 24, 2016, is open for comment through December 23, 2016 (*see* 81 FR 73108); the 60-day notice will be followed by a 30-day notice, after which the revised information collection request will be finalized and approved by OMB. Revisions to the approved information collection include the following:

- *Disenrollment Letter and Appeal Notification—Eligibility:* Of the over 70,000 Program members, we expect that 0.014 percent (10) will be subsequently disenrolled from the Program. Of those, we expect that 30 percent (3) will appeal the disenrollment decisions. We estimate that the appeal requests will take no more than 0.5 hours per respondent. The annual burden estimate is 1.5 hours.
- *Decertification Letter and Appeal Notification—Health Condition:* Of the projected 51,472 enrollees who have at least

[23] Tengs and Wallace, *supra* note 15, reports ranges of differences in QALYs according to different treatments for ovarian cancer patients and whether these patients responded to these treatments. The ranges of these differences varied from 0.06 to 0.17. We used the low end of the range as a conservative estimate. We are not aware of data available with which to estimate the possible effect more reliably.

one health condition certification, it is estimated that 0.02 percent (10) will be decertified, and 50 percent (5) of those will appeal a decertification. We estimate that the appeal request will take no more than 0.5 hours per respondent and providing additional information and/or an oral statement will take no more than 1 hour per respondent. The annual burden estimate is 7.5 hours.

• *Denial Letter and Appeal Notification—Health Condition Certification:* This information collection, including the submission of appeal requests, is currently approved by OMB for 60 respondents (0.5 hours per respondent) and is expanded by this final rule to include the provision of new information and/or an oral statement. We do not expect the OMB-approved estimated number of respondents to change. We estimate that the additional burden will be no more than 1 hour per respondent. The total burden estimate (1.5 hours) includes both 0.5 hours per respondent for the submission of an appeal request (currently approved by OMB) as well as 1 hour per respondent for new information and/or an oral statement. The annual burden estimate is 90 hours.

• *Denial Letter and Appeal Notification—Treatment Authorization:* This information collection, including the submission of appeal requests, is currently approved by OMB for 26 respondents (0.5 hours per respondent) and is expanded by this final rule to include the provision of new information and/or an oral statement. We do not expect the OMB-approved estimated number of respondents to change. We estimate that the additional burden will be no more than 1 hour per respondent. The total burden estimate (1.5 hours) includes both 0.5 hours per respondent for the submission of an appeal request (currently approved by OMB) as well as 1 hour per respondent for new information and/or an oral statement. The annual burden estimate is 39 hours.

• *Reimbursement Denial Letter and Appeal Notification—Providers:* Of the nearly 52,000 providers affiliated with the Program, it is estimated that 1.15 percent (600) annually will appeal a denial of reimbursement for treatment found to be not medically necessary or in accordance with treatment protocols. We estimate that the appeal request will take no more than 0.5 hours per respondent to compile. The annual burden estimate is 300 hours.

• *Designated Representative HIPAA Authorization:* The Program also finds it necessary to add a new form to allow applicants and Program members to grant permission to share protected health information with an individual who has been properly appointed the applicant's or member's designated representative pursuant to 42 CFR 88.2. We estimate that 10 applicants and members will submit the Designated Representative Health Insurance Portability and Accountability Act (HIPAA) Authorization form annually. The form is expected to take no longer than 0.25 hours to complete. The burden estimate for the HIPAA Authorization form is 2.5 hours.

The Program estimates that the total annual paperwork burden associated with this rulemaking, including the revised and new burden hour estimates, is 14,178.95 hours.[24]

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
FDNY Responder	World Trade Center Health Program FDNY Responder Eligibility Application.	45	1	0.5	22.5
General Responder	World Trade Center Health Program Responder Eligibility Application (Other than FDNY).	2,475	1	0.5	1,237.5
Pentagon/Shanksville Responder.	World Trade Center Health Program Pentagon/Shanksville Responder.	630	1	0.5	315
WTC Survivor	World Trade Center Health Program Survivor Eligibility Application.	1,350	1	0.5	675
General Responder	Postcard for new general responders in NY/NJ to select a clinic.	2,475	1	0.25	618.75
Program Medical Provider.	WTC–3 Request for Certification	20,000	1	0.5	10,000
Responder/Survivor	Denial Letter and Appeal Notification—Enrollment.	45	1	0.5	22.5
Responder/Survivor	Disenrollment Letter and Appeal Notification—Eligibility.	3	1	0.5	1.5
Responder/Survivor	Decertification Letter and Appeal Notification	5	1	1.5	7.5
Responder/Survivor	Denial Letter and Appeal Notification—Health Condition Certification.	60	1	1.5	90
Responder/Survivor	Denial Letter and Appeal Notification—Treatment Authorization.	26	1	1.5	39
Responder/Survivor	WTC Health Program Medical Travel Refund Request.	10	1	0.17	1.7
Responder/Survivor	Designated Representative form	10	1	0.25	2.5
Pharmacy	Outpatient prescription pharmaceuticals	150	261	0.02	783
Program Medical Provider.	Reimbursement Denial Letter and Appeal Notification.	600	1	0.5	300
Responder/Survivor	Designated Representative HIPAA Authorization	10	1	0.25	2.5
Responder/Survivor/Advocate (physician).	Petition for the addition of health conditions	60	1	1	60
Total					14,178.95

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.,* HHS will report the promulgation of this rule to Congress prior to its effective date.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et*

[24] The burden estimates provided here are subject to change in the final approved information collection revision request, pending the collection and review of public comments.

seq., directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this final rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local, or Tribal governments in the aggregate, or by the private sector.

F. Executive Order 12988 (Civil Justice)

This final rule has been drafted and reviewed in accordance with Executive Order 12988, ''Civil Justice Reform,'' and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

The Administrator has reviewed this final rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have ''Federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, the Administrator has evaluated the environmental health and safety effects of this final rule on children. The Administrator has determined that the rule would have no environmental health and safety effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, the Administrator has evaluated the effects of this final rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

J. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal government administers or enforces. The Administrator has attempted to use plain language in promulgating the final rule consistent with the Federal Plain Writing Act guidelines and requests public comment on this effort.

List of Subjects in 42 CFR Part 88

Aerodigestive disorders, Appeal procedures, Health care, Mental health conditions, Musculoskeletal disorders, Respiratory and pulmonary diseases.

Final rule

■ For the reasons discussed in the preamble, the Administrator revises 42 CFR part 88 to read as follows:

PART 88—WORLD TRADE CENTER HEALTH PROGRAM

Sec.

88.1 Definitions.
88.2 General provisions.
88.3 Eligibility—currently-identified responders.
88.4 Eligibility criteria—WTC responders.
88.5 Application process—WTC responders.
88.6 Enrollment decision—WTC responders.
88.7 Eligibility—currently-identified survivors.
88.8 Eligibility criteria—WTC survivors.
88.9 Application process—WTC survivors.
88.10 Enrollment decision—screening-eligible survivors.
88.11 Initial health evaluation for screening-eligible survivors.
88.12 Enrollment decision—certified-eligible survivors.
88.13 Disenrollment.
88.14 Appeal of enrollment or disenrollment decision.
88.15 List of WTC-Related Health Conditions.
88.16 Addition of health conditions to the List of WTC-Related Health Conditions.
88.17 Physician's determination of WTC-related health conditions.
88.18 Certification.
88.19 Decertification.
88.20 Authorization of treatment.
88.21 Appeal of certification, decertification, or treatment authorization decision.
88.22 Reimbursement for medical treatment and services.
88.23 Appeal of reimbursement denial.
88.24 Coordination of benefits and recoupment.
88.25 Reopening of WTC Health Program final decisions.

Authority: 42 U.S.C. 300mm to 300mm-61, Pub. L. 111–347, 124 Stat. 3623, as amended by Pub. L. 114–113, 129 Stat. 2242.

§ 88.1 Definitions.

Act means Title XXXIII of the Public Health Service Act, as amended, 42 U.S.C. 300mm through 300mm–61 (codifying Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. 111–347, as amended by Pub. L. 114–113), which created the World Trade Center (WTC) Health Program.

Aggravating means a health condition that existed on September 11, 2001, and that, as a result of exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, requires medical treatment that is (or will be) in addition to, more frequent than, or of longer duration than the medical treatment that would have been required for such condition in the absence of such exposure.

Certification means WTC Health Program review of a health condition in a particular WTC Health Program member for the purpose of identification and approval of a WTC-related health condition, as defined in this section and included on the List of WTC-Related Health Conditions in 42 CFR 88.15, or a health condition medically associated with a WTC-related health condition.

Certified-eligible survivor means (1) an individual who has been identified as eligible for medical monitoring and treatment as of January 2, 2011; or (2) a screening-eligible survivor who is eligible for follow-up monitoring and treatment pursuant to § 88.12(b).

Clinical Center of Excellence (CCE) means a center or centers under contract with the WTC Health Program. A CCE:

(1) Uses an integrated, centralized health care provider approach to create a comprehensive suite of health services that are accessible to enrolled WTC responders, screening-eligible survivors, or certified-eligible survivors;

(2) Has experience in caring for WTC responders and screening-eligible survivors, or includes health care providers who have received WTC Health Program training;

(3) Employs health care provider staff with expertise that includes, at a minimum, occupational medicine, environmental medicine, trauma-related psychiatry and psychology, and social services counseling; and

(4) Meets such other requirements as specified by the Administrator of the WTC Health Program.

Data Center means a center or centers under contract with the WTC Health Program to:

(1) Receive, analyze, and report to the Administrator of the WTC Health Program on data that have been collected and reported to the Data Center by the corresponding CCE(s);

(2) Develop monitoring, initial health evaluation, and treatment protocols with respect to WTC-related health conditions;

(3) Coordinate the outreach activities of the corresponding CCE;

(4) Establish criteria for credentialing of medical providers participating in the Nationwide Provider Network;

(5) Coordinate and administer the activities of the WTC Health Program Steering Committees; and

(6) Meet periodically with the corresponding CCE(s) to obtain input on the analysis and reporting of data and on development of monitoring, initial health evaluation, and treatment protocols.

Designated representative means an individual selected by an applicant, WTC responder, or a screening-eligible or certified-eligible survivor to represent his or her interests to the WTC Health Program.

Ground Zero means a site in Lower Manhattan bounded by Vesey Street to the north, the West Side Highway to the west, Liberty Street to the south, and Church Street to the east in which stood the former World Trade Center complex.

Health condition medically associated with a WTC-related health condition means a condition that results from treatment of a WTC-related health condition or results from progression of a WTC-related health condition.

Initial health evaluation means assessment of one or more symptoms that may be associated with a WTC-related health condition and includes a medical and exposure history, a physical examination, and additional medical testing as needed to evaluate whether the individual has a WTC-related health condition and is eligible for treatment under the WTC Health Program.

Interested party means a representative of any organization representing WTC responders, a nationally recognized medical association, a WTC Health Program CCE or Data Center, a State or political subdivision, or any other interested person.

List of WTC-Related Health Conditions means those conditions eligible for coverage in the WTC Health Program as identified in § 88.15 of this part.

Medical emergency means a physical or mental health condition for which immediate treatment is necessary.

Medically necessary treatment means the provision of services to a WTC Health Program member by physicians and other health care providers, including diagnostic and laboratory tests, prescription drugs, inpatient and outpatient hospital services, and other care that is appropriate, to manage, ameliorate, or cure a WTC-related health condition or a health condition medically associated with a WTC-related health condition, and which conforms to medical treatment protocols developed by the Data Centers, with input from the CCEs, and approved by the Administrator of the WTC Health Program.

Monitoring means periodic physical and mental health assessment of a WTC responder or certified-eligible survivor in relation to exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks and which includes a medical and exposure history, a physical examination and additional medical testing as needed for surveillance or to evaluate symptom(s) to determine whether the individual has a WTC-related health condition.

Nationwide Provider Network (NPN) means a network of providers throughout the United States under contract with the WTC Health Program to provide an initial health evaluation, monitoring, and treatment to enrolled WTC responders, screening-eligible survivors, or certified-eligible survivors who live outside the New York metropolitan area.

New York City disaster area means an area within New York City that is the area of Manhattan that is south of Houston Street and any block in Brooklyn that is wholly or partially contained within a 1.5-mile radius of the former World Trade Center complex.

New York metropolitan area means the combined statistical areas comprising the Bridgeport-Stamford-Norwalk, CT Metropolitan Statistical Area; Kingston, NY Metropolitan Statistical Area; New Haven-Milford, CT Metropolitan Statistical Area; New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area; Poughkeepsie-Newburgh-Middletown, NY Metropolitan Statistical Area; Torrington, CT Micropolitan Statistical Area; Trenton-Ewing, NJ Metropolitan Statistical Area, as defined in OMB Bulletin 10–02, December 1, 2009.

NIOSH means the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

One (1) day means the length of a standard work shift, or at least 4 hours but less than 24 hours.

Pentagon site means any area of the land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles, vehicle access, and other areas immediately adjacent to the land or improvements previously described that were affected by the terrorist-related aircraft crash on September 11, 2001; and those areas at Fort Belvoir in Fairfax County, Virginia and at the Dover Port Mortuary at Dover Air Force Base in Delaware involved in the recovery, identification, and transportation of human remains for the incident.

Police department means any law enforcement department or agency, whether under Federal, state, or local jurisdiction, responsible for general police duties, such as maintenance of public order, safety, or health, enforcement of laws, or otherwise charged with prevention, detection, investigation, or prosecution of crimes.

Scientific/Technical Advisory Committee means the WTC Health Program Scientific/Technical Advisory Committee whose members are appointed by the Administrator of the WTC Health Program to review scientific and medical evidence and to make recommendations to the Administrator on additional WTC Health Program eligibility criteria and on additional WTC-related health conditions.

Screening-eligible survivor means an individual who is not a WTC responder and who claims symptoms of a WTC-related health condition and meets the eligibility criteria for a survivor specified in § 88.8 of this part.

September 11, 2001, terrorist attacks means the terrorist attacks that occurred on September 11, 2001, in New York City, at Shanksville, Pennsylvania, and at the Pentagon, and includes the aftermath of such attacks.

Shanksville, Pennsylvania site means the property in Stonycreek Township, Somerset County, Pennsylvania, which is bounded by Route 30 (Lincoln Highway), State Route 1019 (Buckstown Road), and State Route 1007 (Lambertsville Road); and those areas at the Pennsylvania National Guard Armory in Friedens, Pennsylvania involved in the recovery, identification, and transportation of human remains for the incident.

Staten Island Landfill means the landfill in Staten Island, NY called ''Fresh Kills.''

Terrorist watch list means the lists maintained by the Federal government that will be utilized to screen for known terrorists.

WTC means World Trade Center.

WTC Health Program means the program established by Title XXXIII of the Public Health Service Act as amended, 42 U.S.C. 300mm to 300mm–61 (codifying Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. 111–347, as amended by Pub. L. 114–113) to provide

medical monitoring and treatment benefits for eligible responders to the September 11, 2001, terrorist attacks and initial health evaluation, monitoring, and treatment benefits for residents and other building occupants and area workers in New York City who were directly impacted and adversely affected by such attacks.

WTC Health Program member means any responder, screening-eligible survivor, or certified-eligible survivor enrolled in the WTC Health Program.

WTC Program Administrator (Administrator of the WTC Health Program, or Administrator) means, for the purposes of this part, the Director of the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services, or his or her designee.

WTC-related acute traumatic injury means a health condition eligible for coverage in the WTC Health Program as described in § 88.15(e)(1) of this part.

WTC-related health condition means an illness or health condition for which exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, based on an examination by a medical professional with expertise in treating or diagnosing the health conditions in the List of WTC-Related Health Conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition, including a mental health condition. Only those conditions on the List of WTC-Related Health Conditions codified in 42 CFR 88.15 may be considered WTC-related health conditions.

WTC-related musculoskeletal disorder means a health condition eligible for coverage in the WTC Health Program as described in § 88.15(c)(1) of this part.

WTC responder means an individual who has been identified as eligible for monitoring and treatment as described in § 88.3 or who meets the eligibility criteria in § 88.4.

§ 88.2 General provisions.

(a) *Designated representative.* (1) An applicant or WTC Health Program member may appoint one individual to represent his or her interests under the WTC Health Program. The appointment must be made in writing and consistent with all relevant Federal laws and regulations in order for the designated representative to receive personal health information.

(2) There may be only one designated representative at any time. After one designated representative has been properly appointed, the WTC Health Program will not recognize another individual as the designated representative until the appointment of the previously designated representative is withdrawn in a signed writing.

(3) A properly appointed designated representative who is recognized by the WTC Health Program may make a request or give direction to the WTC Health Program regarding the eligibility, certification, or any other administrative issue pertaining to the applicant or WTC Health Program member under the WTC Health Program, including appeals. Any notice requirement contained in this part or in the Act is fully satisfied if sent to the designated representative.

(4) An applicant or WTC Health Program member may authorize any individual to represent him or her in regard to the WTC Health Program, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 or 18 U.S.C. 208) or is otherwise prohibited by WTC Health Program policies and procedures or contract provisions.

(5) A Federal employee may act as a representative only on behalf of the individuals specified in, and in the manner permitted by, 18 U.S.C. 203 and 18 U.S.C. 205.

(6) If an applicant or screening-eligible or certified-eligible survivor is a minor, a parent or guardian may act on his or her behalf.

(7) If an applicant or WTC Health Program member is a mentally incompetent adult, an individual authorized under state or other applicable law to act on the applicant's or member's behalf may act as his or her designated representative as described in this section.

(b) *Transportation and travel expenses.* The WTC Health Program may provide for necessary and reasonable transportation and expenses incident to the securing of medically necessary treatment through the NPN, involving travel of more than 250 miles.

§ 88.3 Eligibility—currently identified responders.

(a) Responders who were identified as eligible for monitoring and treatment under the arrangements as in effect on January 2, 2011, between NIOSH and the consortium administered by Mount Sinai School of Medicine in New York City and the Fire Department, City of New York, are enrolled in the WTC Health Program.

(1) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government will be considered to be enrolled in the WTC Health Program.

(2) [Reserved]

(b) WTC responders identified as enrolled under this section are not required to submit an application to the WTC Health Program.

§ 88.4 Eligibility criteria—WTC responders.

(a) Responders to the New York City disaster area who have not been previously identified as eligible as provided for under § 88.3 of this part may apply for enrollment in the WTC Health Program on or after July 1, 2011. Such individuals must meet the criteria in one of the following categories to be considered eligible for enrollment:

(1) Firefighters and related personnel must meet the criteria specified in paragraph (a)(1)(i) or (ii) of this section:

(i) The individual was an active or retired member of the Fire Department, City of New York (whether firefighter or emergency personnel), and participated at least 1 day in the rescue and recovery effort at any of the former World Trade Center sites (including Ground Zero, the Staten Island Landfill, or the New York City Chief Medical Examiner's Office), during the period beginning on September 11, 2001, and ending on July 31, 2002; or

(ii) The individual is:

(A) A surviving immediate family member of an individual who was an active or retired member of the Fire Department, City of New York (whether firefighter or emergency personnel), who was killed at Ground Zero on September 11, 2001, and

(B) Received any treatment for a WTC-related mental health condition on or before September 1, 2008.

(2) Law enforcement officers and WTC rescue, recovery, and cleanup workers must meet the criteria specified in paragraph (a)(2)(i) or (ii) of this section:

(i) The individual worked or volunteered onsite in rescue, recovery, debris cleanup, or related support services in lower Manhattan (south of Canal Street), the Staten Island Landfill, or the barge loading piers, for at least:

(A) 4 hours during the period beginning on September 11, 2001, and ending on September 14, 2001; or

(B) 24 hours during the period beginning on September 11, 2001, and ending on September 30, 2001; or

(C) 80 hours during the period beginning on September 11, 2001, and ending on July 31, 2002.

(ii) The individual was an active or retired member of the New York City Police Department or an active or retired member of the Port Authority Police of the Port Authority of New York and

New Jersey who participated onsite in rescue, recovery, debris cleanup, or related support services, for at least:

(A) 4 hours during the period beginning September 11, 2001, and ending on September 14, 2001, in lower Manhattan (south of Canal Street), including Ground Zero, the Staten Island Landfill, or the barge loading piers; or

(B) 1 day beginning on September 11, 2001, and ending on July 31, 2002, at Ground Zero, the Staten Island Landfill, or the barge loading piers; or

(C) 24 hours during the period beginning on September 11, 2001, and ending on September 30, 2001, in lower Manhattan (south of Canal Street); or

(D) 80 hours during the period beginning on September 11, 2001, and ending on July 31, 2002, in lower Manhattan (south of Canal Street).

(3) Office of the Chief Medical Examiner of New York City employee. The individual was an employee of the Office of the Chief Medical Examiner of New York City involved in the examination and handling of human remains from the WTC attacks, or other morgue worker who performed similar post-September 11 functions for such Office staff, during the period beginning on September 11, 2001, and ending on July 31, 2002.

(4) Port Authority Trans-Hudson Corporation Tunnel worker. The individual was a worker in the Port Authority Trans-Hudson Corporation Tunnel for at least 24 hours during the period beginning on February 1, 2002, and ending on July 1, 2002.

(5) Vehicle-maintenance worker. The individual was a vehicle-maintenance worker who was exposed to debris from the former World Trade Center while retrieving, driving, cleaning, repairing, and maintaining vehicles contaminated by airborne toxins from the September 11, 2001, terrorist attacks; and conducted such work for at least 1 day during the period beginning on September 11, 2001, and ending on July 31, 2002.

(b) Responders to the Pentagon site of the September 11, 2001, terrorist attacks, may apply for enrollment in the WTC Health Program on or after April 29, 2013. Individuals must meet the criteria below to be considered eligible for enrollment:

(1) The individual was an active or retired member of a fire or police department (fire or emergency personnel), worked for a recovery or cleanup contractor, or was a volunteer; and

(2) Performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon site of the September 11, 2001, terrorist attacks, for at least 1 day beginning September 11, 2001, and ending on November 19, 2001.

(c) Responders to the Shanksville, Pennsylvania site of the September 11, 2001, terrorist attacks, may apply for enrollment in the WTC Health Program on or after April 29, 2013. Individuals must meet the criteria below to be considered eligible for enrollment:

(1) The individual was an active or retired member of a fire or police department (fire or emergency personnel), worked for a recovery or cleanup contractor, or was a volunteer; and

(2) Performed rescue, recovery, demolition, debris cleanup, or other related services at the Shanksville, Pennsylvania site of the September 11, 2001, terrorist attacks, for at least 1 day beginning September 11, 2001, and ending on October 3, 2001.

(d) [Reserved]

(e) The WTC Health Program will maintain a list of WTC responders.

§ 88.5 Application process—WTC responders.

(a) An application to the WTC Health Program based on the criteria in § 88.4 must be submitted with documentation of the applicant's employment affiliation (if relevant) and work activity during the dates, times, and locations specified in § 88.4

(1) Documentation may include but is not limited to a pay stub; official personnel roster; a written statement, under penalty of perjury by an employer; site credentials; or similar documentation.

(2) An applicant who is unable to submit the required documentation must instead offer a written explanation of how he or she tried to obtain proof of presence, residence, or work activity and why the attempt was unsuccessful. The applicant must attest, under penalty of perjury, that he or she meets the criteria specified in § 88.4.

(b) The application and supporting documentation must be submitted to the WTC Health Program for consideration.

(c) The WTC Health Program will notify the applicant in writing (or by email if an email address is provided by the applicant) of any deficiencies in the application or the supporting documentation.

§ 88.6 Enrollment decision—WTC responders.

(a) *Enrollment priority.* The WTC Health Program will prioritize applications in the order in which they are received.

(b) *Enrollment eligibility.* The WTC Health Program will decide if the applicant meets the eligibility criteria provided in § 88.4.

(c) *Denial of enrollment.* (1) The WTC Health Program will deny enrollment if the applicant fails to meet the applicable eligibility requirements.

(2) The WTC Health Program may deny enrollment of a responder who is otherwise eligible and qualified if the Act's numerical limitations for newly enrolled responders have been met.

(i) No more than 25,000 WTC responders, other than those enrolled pursuant to §§ 88.3 and 88.4(a)(1)(ii), may be enrolled at any time. The Administrator of the WTC Health Program may decide, based on the best available evidence, that sufficient funds are available under the WTC Health Program Fund to provide treatment and monitoring only for individuals who are already enrolled as WTC responders at that time.

(ii) [Reserved]

(3) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government may qualify to be enrolled or be determined to be eligible for the WTC Health Program.

(d) *Notification of enrollment decision.* (1) The WTC Health Program will decide if the applicant meets the current eligibility criteria for WTC responders in § 88.4 and is qualified, and notify the applicant of the enrollment decision in writing within 60 calendar days of the date of receipt of the application. The 60-day time period will not include any days during which the applicant is correcting deficiencies in the application or supporting documentation.

(2) If the WTC Health Program decides that an applicant is denied enrollment, the written notification will include an explanation, as appropriate, for the decision to deny enrollment and inform the applicant of the right to appeal the initial denial of eligibility and provide instructions on how to file an appeal.

§ 88.7 Eligibility—currently identified survivors.

(a) Survivors who have been identified as eligible for medical treatment and monitoring as of January 2, 2011, are considered certified-eligible in the WTC Health Program.

(1) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government will be considered to be a certified-eligible survivor in the WTC Health Program.

(2) [Reserved]

(b) Survivors identified as certified-eligible under this section are not

required to submit an application to the WTC Health Program.

§ 88.8 Eligibility criteria—WTC survivors.

(a) Criteria for status as a screening-eligible survivor. An individual who is not a WTC responder, claims symptoms of a WTC-related health condition, and who has not been previously identified as eligible under § 88.7 may apply to the WTC Health Program on or after July 1, 2011, for a determination of eligibility for an initial health evaluation.

(1) The WTC Health Program will determine an applicant's eligibility for an initial health evaluation based on one of the following criteria:

(i) The screening applicant was present in the dust or dust cloud in the New York City disaster area on September 11, 2001.

(ii) The screening applicant worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area, for at least:

(A) 4 days during the period beginning on September 11, 2001, and ending on January 10, 2002; or

(B) 30 days during the period beginning on September 11, 2001, and ending on July 31, 2002.

(iii) The screening applicant worked as a cleanup worker or performed maintenance work in the New York City disaster area during the period beginning on September 11, 2001, and ending on January 10, 2002, and had extensive exposure to WTC dust as a result of such work.

(iv) The screening applicant:

(A) Was deemed eligible to receive a grant from the Lower Manhattan Development Corporation Residential Grant Program;

(B) Possessed a lease for a residence or purchased a residence in the New York City disaster area; and

(C) Resided in such residence during the period beginning on September 11, 2001, and ending on May 31, 2003.

(v) The screening applicant is an individual whose place of employment—

(A) At any time during the period beginning on September 11, 2001, and ending on May 31, 2003, was in the New York City disaster area; and

(B) Was deemed eligible to receive a grant from the Lower Manhattan Development Corporation WTC Small Firms Attraction and Retention Act program or other government incentive program designed to revitalize the lower Manhattan economy after the September 11, 2001, terrorist attacks.

(2) [Reserved]

(b) Criteria for status as a certified-eligible survivor. Survivors who have been determined to have screening-eligible status under § 88.10(a), may seek status as a certified-eligible survivor. Status as a certified-eligible survivor is based on a certification by the WTC Health Program that, pursuant to an initial health evaluation, the screening-eligible survivor has a WTC-related health condition and is eligible for follow-up monitoring and treatment.

(c) The WTC Health Program will maintain a list of screening-eligible and certified-eligible survivors.

§ 88.9 Application process—WTC survivors.

(a) *Application for status as a screening-eligible survivor.* An application to the WTC Health Program based on the criteria in § 88.8(a) must be submitted with documentation of the applicant's location, presence or residence, and/or work activity during the relevant time period.

(1) Documentation may include but is not limited to: Proof of residence, such as a lease or utility bill; attendance roster at a school or daycare; or pay stub, other employment documentation, or written statement, under penalty of perjury, by an employer indicating employment location during the relevant time period; or similar documentation. The applicant must also attest to symptoms of a WTC-related health condition.

(2) An applicant who is unable to submit the required documentation must instead offer a written explanation of how he or she tried to obtain proof of location, presence, or residence, and/or work activity and why the attempt was unsuccessful. The applicant must attest, under penalty of perjury, that he or she meets the criteria specified in § 88.8.

(3) The applicant will be notified of any deficiencies in the application or the supporting documentation.

(b) *Status as a certified-eligible survivor.* No additional application is required for status as a certified-eligible survivor. If, based upon the screening-eligible survivor's initial health evaluation (*see* § 88.11), the WTC Health Program certifies the diagnosis of a WTC-related health condition, then the survivor will automatically receive the status of a certified-eligible survivor.

§ 88.10 Enrollment decision—screening-eligible survivors.

(a) The WTC Health Program will decide if the applicant meets the screening-eligible survivor criteria pursuant to § 88.8(a) and is qualified, and notify the applicant of the enrollment decision in writing within 60 calendar days of the date of receipt of the application. The 60-day time period will not include any days during which the applicant is correcting deficiencies in the application or supporting documentation.

(b) If the WTC Health Program decides that an applicant is denied enrollment, the written notification will include an explanation for the decision to deny enrollment and inform the applicant of the right to appeal the enrollment denial and provide instructions on how to file an appeal.

(1) The WTC Health Program may deny screening-eligible survivor status if the applicant is ineligible under the criteria specified in § 88.8(a).

(2) The WTC Health Program may deny screening-eligible survivor status if the numerical limitation on certified-eligible survivors in § 88.12(b)(3)(i) has been met.

(3) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government may qualify to be a screening-eligible survivor in the WTC Health Program.

§ 88.11 Initial health evaluation for screening-eligible survivors.

(a) A CCE or an NPN-affiliated physician will provide the screening-eligible survivor an initial health evaluation to determine if the individual has a WTC-related health condition.

(b) The WTC Health Program will provide only one initial health evaluation per screening-eligible survivor. The individual may request additional health evaluations at his or her own expense.

(c) If the physician determines that the screening-eligible survivor has a WTC-related health condition, the physician will promptly transmit to the WTC Health Program his or her determination, consistent with the requirements of § 88.17(a).

§ 88.12 Enrollment decision—certified-eligible survivors.

(a) The WTC Health Program will prioritize certification requests in the order in which they are received.

(b) The WTC Health Program will review the physician's determination, render a decision regarding certification of the individual's WTC-related health condition, and notify the individual of the decision and the reason for the decision in writing, pursuant to §§ 88.17 and 88.18.

(1) If the individual is a screening-eligible survivor and the individual's condition is certified as a WTC-related health condition, the individual will automatically receive the status of a certified-eligible survivor.

(2) If a screening-eligible survivor's condition is not certified as a WTC-related health condition pursuant to §§ 88.17 and 88.18, the WTC Health Program will deny certified-eligible status. The screening-eligible survivor may appeal the decision to deny certification, as provided under § 88.21.

(3) The WTC Health Program may deny certified-eligible survivor status of an otherwise eligible and qualified screening-eligible survivor if the Act's numerical limitations for certified-eligible survivors have been met.

(i) No more than 25,000 individuals, other than those described in § 88.7, may be determined to be certified-eligible survivors at any time. The Administrator of the WTC Health Program may decide, based on the best available evidence, that sufficient funds are available under the WTC Health Program Fund to provide treatment and monitoring only for individuals who have already been certified as certified-eligible survivors at that time.

(ii) [Reserved]

(4) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government may qualify to be a certified-eligible survivor in the WTC Health Program.

§ 88.13 Disenrollment.

(a) The disenrollment of a WTC Health Program member may be initiated by the WTC Health Program in the following circumstances:

(1) The WTC Health Program mistakenly enrolled an individual under § 88.4 (WTC responders) or § 88.8 (screening-eligible survivors) who did not provide sufficient proof of eligibility consistent with the required eligibility criteria; or

(2) The WTC Health Program member's enrollment was based on incorrect or fraudulent information.

(b) The disenrollment of a WTC Health Program member may be initiated by the enrollee for any reason.

(c) A disenrolled WTC Health Program member will be notified in writing by the WTC Health Program of a disenrollment decision, provided an explanation, as appropriate, for the decision, and provided information on how to appeal the decision. A disenrolled WTC Health Program member disenrolled pursuant to paragraph (a) may appeal the disenrollment decision in accordance with § 88.14.

(d) A disenrolled WTC Health Program member who has been disenrolled in accordance with paragraphs (a) or (b) of this section may seek to re-enroll in the WTC Health Program using the application and enrollment procedures, provided that the application is supported by new information.

§ 88.14 Appeal of enrollment or disenrollment decision.

(a) *Right to appeal.* An applicant denied WTC Health Program enrollment, a disenrolled WTC Health Program member, or the applicant's or member's designated representative (appointed pursuant to § 88.2(a)) may appeal the enrollment denial or disenrollment decision.

(b) *Appeal request.* (1) A letter requesting an appeal must be postmarked within 120 calendar days of the date of the letter from the Administrator notifying the denied applicant or disenrolled WTC Health Program member of the adverse decision. Electronic versions of a signed letter will be accepted if transmitted within 120 calendar days of the date of the Administrator's notification letter.

(2) A valid request for an appeal must:

(i) Be made in writing and signed;

(ii) Identify the denied applicant or disenrolled WTC Health Program member and designated representative (if applicable);

(iii) Describe the decision being appealed and state the reasons why the denied applicant, disenrolled WTC Health Program member, or designated representative believes the enrollment denial or disenrollment was incorrect and should be reversed. The appeal request may include relevant new information not previously considered by the WTC Health Program; and

(iv) Be sent to the WTC Health Program at the address specified in the notice of denial or disenrollment.

(3) Where the denial or disenrollment is based on information from the terrorist watch list, the appeal will be forwarded to the appropriate Federal agency.

(c) *Appeal process.* Upon receipt of a valid appeal, the Administrator will appoint a Federal Official independent of the WTC Health Program to review the case. The Federal Official will review all available records relevant to the WTC Health Program's decision not to enroll the applicant or to disenroll the WTC Health Program member and assess whether the appeal should be granted. In conducting the review, the Federal Official's consideration will include the following: Whether the WTC Health Program substantially complied with all relevant WTC Health Program policies and procedures; whether the information supporting the WTC Health Program's decision was factually accurate; and whether the WTC Health Program's decision was reasonable as applied to the facts of the case.

(1) The Federal Official may consider additional relevant new information submitted by the denied applicant, disenrolled WTC Health Program member, or designated representative.

(2) The Federal Official will provide his or her recommendation regarding the disposition of the appeal, including his or her findings and any supporting materials, to the Administrator.

(d) *Final decision and notification.* The Administrator will review the Federal Official's recommendation and any relevant information and make a final decision on the appeal. The Administrator will notify the denied applicant or disenrolled WTC Health Program member and/or designated representative of the following in writing:

(1) The recommendation and findings made by the Federal Official as a result of the review;

(2) The Administrator's final decision on the appeal;

(3) An explanation of the reason(s) for the Administrator's final decision on the appeal; and

(4) Any administrative actions taken by the WTC Health Program in response to the Administrator's final decision.

§ 88.15 List of WTC-Related Health Conditions.

WTC-related health conditions include the following disorders and conditions:

(a) Aerodigestive disorders:

(1) Interstitial lung diseases.

(2) Chronic respiratory disorder—fumes/vapors.

(3) Asthma.

(4) Reactive airways dysfunction syndrome (RADS).

(5) WTC-exacerbated and new-onset chronic obstructive pulmonary disease (COPD).

(6) Chronic cough syndrome.

(7) Upper airway hyperreactivity.

(8) Chronic rhinosinusitis.

(9) Chronic nasopharyngitis.

(10) Chronic laryngitis.

(11) Gastroesophageal reflux disorder (GERD).

(12) Sleep apnea exacerbated by or related to a condition described in preceding paragraphs (a)(1) through (11) of this section.

(b) Mental health conditions:

(1) Posttraumatic stress disorder (PTSD).

(2) Major depressive disorder.

(3) Panic disorder.

(4) Generalized anxiety disorder.

(5) Anxiety disorder (not otherwise specified).

(6) Depression (not otherwise specified).
(7) Acute stress disorder.
(8) Dysthymic disorder.
(9) Adjustment disorder.
(10) Substance abuse.
(c) Musculoskeletal disorders:
(1) WTC-related musculoskeletal disorder is a chronic or recurrent disorder of the musculoskeletal system caused by heavy lifting or repetitive strain on the joints or musculoskeletal system occurring during rescue or recovery efforts in the New York City disaster area in the aftermath of the September 11, 2001, terrorist attacks. For a WTC responder who received any treatment for a WTC-related musculoskeletal disorder on or before September 11, 2003, such a health condition includes:
(i) Low back pain.
(ii) Carpal tunnel syndrome (CTS).
(iii) Other musculoskeletal disorders.
(2) [Reserved].
(d) Cancers:
(1) Malignant neoplasms of the lip; tongue; salivary gland; floor of mouth; gum and other mouth; tonsil; oropharynx; hypopharynx; and other oral cavity and pharynx.
(2) Malignant neoplasm of the nasopharynx.
(3) Malignant neoplasms of the nose; nasal cavity; middle ear; and accessory sinuses.
(4) Malignant neoplasm of the larynx.
(5) Malignant neoplasm of the esophagus.
(6) Malignant neoplasm of the stomach.
(7) Malignant neoplasms of the colon and rectum.
(8) Malignant neoplasms of the liver and intrahepatic bile duct.
(9) Malignant neoplasms of the retroperitoneum and peritoneum; omentum; and mesentery.
(10) Malignant neoplasms of the trachea; bronchus and lung; heart, mediastinum and pleura; and other ill-defined sites in the respiratory system and intrathoracic organs.
(11) Mesothelioma.
(12) Malignant neoplasms of the peripheral nerves and autonomic nervous system; and other connective and soft tissue.
(13) Malignant neoplasms of the skin (melanoma and non-melanoma), including scrotal cancer.
(14) Malignant neoplasm of the female breast.
(15) Malignant neoplasm of the ovary.
(16) Malignant neoplasm of the prostate.
(17) Malignant neoplasm of the urinary bladder.
(18) Malignant neoplasm of the kidney.
(19) Malignant neoplasms of the renal pelvis; ureter; and other urinary organs.
(20) Malignant neoplasms of the eye and orbit.
(21) Malignant neoplasm of the thyroid.
(22) Malignant neoplasms of the blood and lymphoid tissues (including, but not limited to, lymphoma, leukemia, and myeloma).
(23) *Childhood cancers:* any type of cancer diagnosed in a person less than 20 years of age.
(24) *Rare cancers:* any type of cancer [1] that occurs in less than 15 cases per 100,000 persons per year in the United States.
(e) Acute traumatic injuries:
(1) WTC-related acute traumatic injury is physical damage to the body caused by and occurring immediately after a one-time exposure to energy, such as heat, electricity, or impact from a crash or fall, resulting from a specific event or incident. For a WTC responder or screening-eligible or certified-eligible survivors who received any medical treatment for a WTC-related acute traumatic injury on or before September 11, 2003, such a health condition includes:
(i) Eye injury.
(ii) Burn.
(iii) Head trauma.
(iv) Fracture.
(v) Tendon tear.
(vi) Complex sprain.
(vii) Other similar acute traumatic injuries.
(2) [Reserved]

§ 88.16 Addition of health conditions to the List of WTC-Related Health Conditions.

(a) Any interested party may submit a request to the Administrator of the WTC Health Program to add a condition to the List of WTC-Related Health Conditions in § 88.15. The Administrator will evaluate the submission to decide whether it is a valid petition.
(1) Each valid petition must include the following:
(i) An explicit statement of an intent to petition the Administrator to add a health condition to the List of WTC-Related Health Conditions;
(ii) Name, contact information, and signature of the interested party petitioning for the addition;
(iii) Name and/or description of the condition(s) to be added;
(iv) Reasons for adding the condition(s), including the medical basis for the association between the September 11, 2001, terrorist attacks and the condition(s) to be added.
(2) Not later than 90 calendar days after the receipt of a valid petition, the Administrator will take one of the following actions:
(i) Request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee;
(ii) Publish in the **Federal Register** a proposed rule to add such health condition;
(iii) Publish in the **Federal Register** the Administrator's decision not to publish a proposed rule and the basis for that decision; or
(iv) Publish in the **Federal Register** a decision that insufficient evidence exists to take action under paragraph (a)(2)(i) through (iii) of this section.
(3) The 90-day time period will not include any days during which the Administrator is consulting with the interested party to clarify the submission.
(4) The Administrator may consider more than one petition simultaneously when the petitions propose the addition of the same health condition. Scientific/Technical Advisory Committee recommendations and **Federal Register** notices initiated by the Administrator pursuant to paragraph (a)(2) of this section may respond to more than one petition.
(5) The Administrator will be required to consider a submission for a health condition previously reviewed by the Administrator and found not to qualify for addition to the List of WTC-Related Health Conditions as a valid new petition only if the submission presents a new medical basis (*i.e.,* a basis not previously reviewed) for the association between the September 11, 2001, terrorist attacks and the condition to be added. A submission that provides no new medical basis and is received after the publication of a response in the **Federal Register** to a petition requesting the addition of the same health condition will not be considered a valid petition and will not be answered in a **Federal Register** notice pursuant to paragraph (a)(2), above. The interested party will be informed of the WTC Health Program's decision in writing.
(b) The Administrator may propose to add a condition to the List of WTC-Related Health Conditions in § 88.15 of this part by publishing a proposed rule in the **Federal Register** and providing interested parties a period of 30 calendar days to submit written comments. The Administrator may

[1] Based on 2005–2009 average annual data age-adjusted to the 2000 U.S. population. *See* Glenn Copeland, Andrew Lake, Rick Firth, *et al.* (eds), *Cancer in North America: 2005–2009. Volume One: Combined Cancer Incidence for the United States, Canada and North America,* Springfield, IL: North American Association of Central Cancer Registries, Inc., June 2012.

extend the comment period for good cause.

(1) If the Administrator requests a recommendation from the WTC Health Program Scientific/Technical Advisory Committee, the Advisory Committee will submit its recommendation to the Administrator no later than 90 calendar days after the date of the transmission of the request or no later than a date specified by the Administrator (but not more than 180 calendar days after the request). The Administrator will publish a proposed rule or a decision not to publish a proposed rule in the **Federal Register** no later than 90 calendar days after the date of transmission of the Advisory Committee recommendation.

(2) Before issuing a final rule to add a health condition to the List of WTC-Related Health Conditions, the Administrator will provide for an independent peer review of the scientific and technical evidence that would be the basis for issuing such final rule.

§ 88.17 Physician's determination of WTC-related health conditions.

(a) A physician affiliated with either a CCE or NPN will promptly transmit to the WTC Health Program a determination that a member's exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition, including a mental health condition. The transmission will also include the basis for such determination. The physician's determination will be made based on an assessment of the following:

(1) The individual's exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks.

(2) The type of symptoms experienced by the individual and the temporal sequence of those symptoms.

(b) For a health condition medically associated with a WTC-related health condition, the physician's determination must contain information establishing how the health condition has resulted from treatment of a previously certified WTC-related health condition or how it has resulted from progression of the certified WTC-related health condition.

§ 88.18 Certification.

(a) *WTC-related health condition.* The WTC Health Program will review each physician determination and render a decision regarding certification of the condition as a WTC-related health condition. The WTC Health Program will notify the WTC Health Program member of the decision and the reason for the decision in writing.

(b) *Health condition medically associated with a WTC-related health condition.* The WTC Health Program will review each physician determination and render a decision regarding certification of the condition as a health condition medically associated with a WTC-related health condition. The WTC Health Program will notify the WTC Health Program member in writing of the decision and the reason for the decision within 60 calendar days after the date the physician's determination is received.

(1) In the course of review, the WTC Health Program may seek a recommendation about certification from a physician panel with appropriate expertise for the condition.

(2) [Reserved]

(c) *Appeal right.* If certification of a condition as a WTC-related health condition or a health condition medically associated with a WTC-related health condition is denied, the WTC Health Program member may appeal the WTC Health Program's decision to deny certification, as provided under § 88.21.

§ 88.19 Decertification.

(a) The decertification of a WTC Health Program member's certified WTC-related health condition or health condition medically associated with a WTC-related health condition may be initiated by the WTC Health Program in the following circumstances:

(1) The WTC Health Program finds that the member's exposure is inadequate or is otherwise not covered;

(2) The WTC Health Program finds that the member's certified WTC-related health condition was certified in error or erroneously considered to have been aggravated, contributed to, or caused by exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, pursuant to § 88.17(a); or

(3) The WTC Health Program finds that the member's health condition was erroneously determined to be medically associated with a WTC-related health condition, pursuant to § 88.17(b).

(b) A WTC Health Program member will be notified in writing by the WTC Health Program of a decertification decision, provided an explanation, as appropriate, for the decision, and provided information on how to appeal the decision. A WTC Health Program member whose WTC-related health condition or health condition medically associated with a WTC-related health condition is decertified may appeal the decertification decision in accordance with § 88.21 of this part.

§ 88.20 Authorization of treatment.

(a) *Generally.* Medically necessary treatment of certified WTC-related health conditions and certified health conditions medically associated with WTC-related health conditions will be provided through the CCEs or the NPN as permitted under WTC Health Program treatment protocols and in accordance with all applicable WTC Health Program policies and procedures.

(b) *Standard for determining medical necessity.* All treatment provided under the WTC Health Program will adhere to a standard which is reasonable and appropriate; based on scientific evidence, professional standards of care, expert opinion or any other relevant information; and which has been included in the medical treatment protocols developed by the Data Centers, with input from the CCEs, and approved by the Administrator of the WTC Health Program.

(c) *Treatment pending certification.* While certification of a condition is pending, authorization for treatment of a WTC-related health condition or a health condition medically associated with a WTC-related health condition must be obtained from the WTC Health Program before treatment is provided, except for the provision of treatment for a medical emergency.

§ 88.21 Appeal of certification, decertification, or treatment authorization decision.

(a) *Right to appeal.* A WTC Health Program member or the member's designated representative (appointed pursuant to § 88.2(a)) may appeal the following four types of decisions made by the WTC Health Program:

(1) To deny certification of a health condition as a WTC-related health condition;

(2) To deny certification of a health condition as medically associated with a WTC-related health condition;

(3) To decertify a WTC-related health condition or a health condition medically associated with a WTC-related health condition; or

(4) To deny authorization of treatment for a certified health condition based on a finding that the treatment is not medically necessary.

(b) *Appeal request.* (1) A letter requesting an appeal must be postmarked within 120 calendar days of the date of the letter from the

Administrator of the WTC Health Program notifying the member of the adverse decision. Electronic versions of a signed letter will be accepted if transmitted within 120 calendar days of the date of the Administrator's notification letter.

(2) A valid request for an appeal must:

(i) Be made in writing and signed;

(ii) Identify the member and designated representative (if applicable);

(iii) Describe the decision being appealed and the reason(s) why the member or designated representative believes the decision is incorrect and should be reversed. The description may include, but is not limited to, the following: Scientific or medical information correcting factual errors that may have been submitted to the WTC Health Program by the CCE or NPN; information demonstrating that the WTC Health Program did not correctly follow or apply relevant WTC Health Program policies or procedures; or any information demonstrating that the WTC Health Program's decision was not reasonable given the facts of the case. The basis provided in the appeal request must be sufficiently detailed and supported by information to permit a review of the appeal. Any new information not previously considered by the WTC Health Program must be included with the appeal request, unless later requested by the WTC Health Program; and

(iv) Be sent to the WTC Health Program at the address specified in the notice of denial.

(3) The appeal request may also state an intent to make a 15-minute oral statement by telephone. The WTC Health Program member or designated representative will have a second opportunity to schedule an oral statement after being contacted by the WTC Health Program regarding the appeal.

(c) *Appeal process.* Upon receipt of a valid appeal, the Administrator will appoint a Federal Official independent of the WTC Health Program to review the case. The Federal Official will review all available records relevant to the WTC Health Program's decision to deny certification of a health condition as a WTC-related health condition, deny certification of a health condition as medically associated with a WTC-related health condition, decertify the WTC-related health condition or health condition medically associated with a WTC-related health condition, or deny treatment authorization, and assess whether the appeal should be granted. The Federal Official's consideration will include the following: Whether the WTC Health Program substantially complied with all relevant WTC Health Program policies and procedures; whether the information supporting the WTC Health Program's decision was factually accurate; and whether the WTC Health Program's decision was reasonable as applied to the facts of the case.

(1) In conducting his or her review, the Federal Official will review the case record, including any oral statement made by the WTC Health Program member or the member's designated representative, as well as additional relevant new information submitted with the appeal request or provided by the WTC Health Program member or the member's designated representative at the request of the WTC Health Program.

(2) The Federal Official may consult one or more qualified experts to review the WTC Health Program's decision and any additional information provided by the WTC Health Program member or the member's designated representative. The expert reviewer(s) will submit their findings to the Federal Official.

(3) The Federal Official will provide his or her recommendation regarding the disposition of the appeal, including his or her findings and any supporting materials (including the transcript of any oral statement and any expert reviewers' findings), to the Administrator.

(d) *Final decision and notification.* The Administrator will review the Federal Official's recommendation and any relevant information and make a final decision on the appeal. The Administrator will notify the WTC Health Program member and/or the member's designated representative of the following in writing:

(1) The recommendation and findings made by the Federal Official as a result of the review;

(2) The Administrator's final decision on the appeal;

(3) An explanation of the reason(s) for the Administrator's final decision on the appeal; and

(4) Any administrative actions taken by the WTC Health Program in response to the Administrator's final decision.

§ 88.22 Reimbursement for medical treatment and services.

(a) *Review of claims.* Each claim for reimbursement for treatment will be reviewed by the WTC Health Program. Claims that cannot be validated by that process will be further assessed by the Administrator of the WTC Health Program.

(b) *Initial health evaluations, medical monitoring, and medically necessary treatment.* (1) The costs incurred by a CCE or NPN-affiliated provider for providing a WTC Health Program member an initial health evaluation, medical monitoring, and/or medically necessary treatment or services for a WTC-related health condition or a health condition medically associated with a WTC-related health condition will be reimbursed according to the payment rates that apply to the provision of such treatment and services under the Federal Employees Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* 20 CFR part 10.

(i) The Administrator will reimburse a CCE or NPN-affiliated provider for treatment for which FECA rates have not been established pursuant to the applicable Medicare fee for service rate, as determined appropriate by the Administrator.

(ii) The Administrator will reimburse a CCE or NPN-affiliated provider for treatment for which neither FECA nor Medicare fee for service rates have been established, at rates as determined appropriate by the Administrator.

(2) If the treatment is determined not to be medically necessary or is inconsistent with WTC Health Program protocols, the Administrator will withhold reimbursement.

(c) *Outpatient prescription pharmaceuticals.* Payment for costs of medically necessary outpatient prescription pharmaceuticals for a WTC-related health condition or health condition medically associated with a WTC-related health condition will be reimbursed by the WTC Health Program under a contract with one or more pharmaceutical benefit management services.

§ 88.23 Appeal of reimbursement denial.

After exhausting procedural and/or contractual administrative remedies, a CCE or NPN medical director or affiliated provider may submit a written appeal of a WTC Health Program decision to withhold reimbursement or payment for treatment found to be not medically necessary or not in accordance with approved WTC Health Program medical treatment protocols pursuant to § 88.20 of this part. Appeal procedures are published on the WTC Health Program Web site.

§ 88.24 Coordination of benefits and recoupment.

The WTC Health Program will attempt to recover the cost of payment for treatment, including pharmacy benefits, for a WTC Health Program member's certified WTC-related health condition or health condition medically associated with a WTC-related health condition by coordinating benefits with any workers' compensation insurance

available [2] for members' work-related health conditions, and with any public or private health insurance available [3] for members' non-work-related health conditions.

(a) Where a WTC Health Program member's WTC-related health condition or health condition medically associated with a WTC-related health condition is eligible for workers' compensation or another illness or injury benefit plan to which New York City is obligated to pay, the WTC Health Program is the primary payer.

(b) Where a WTC Health Program member has filed a workers' compensation claim for a WTC-related health condition or health condition medically associated with a WTC-related health condition and the claim is pending, the WTC Health Program is the primary payer; however, if the claim is ultimately accepted by the workers' compensation board, the workers' compensation insurer in question is responsible for reimbursing the WTC Health Program for any treatment provided and/or paid for during the pendency of the claim.

(c) Where a WTC Health Program member has filed a workers' compensation claim for a WTC-related health condition or health condition medically associated with a WTC-related health condition, but a final decision is issued denying the compensation for the claim, the WTC Health Program is the primary payer.

(d) Where a WTC Health Program member has filed a workers' compensation claim for a WTC-related health condition or health condition medically associated with a WTC-related health condition with a workers' compensation plan to which New York City is not obligated to pay, the workers' compensation insurer is the primary payer. The WTC Health Program is the secondary payer.

(1) If a WTC Health Program member settles a workers' compensation claim by entering into a settlement agreement that releases the employer or insurance carrier from paying for future medical care, the settlement must protect the interests of the WTC Health Program. This may include setting aside adequate funds to pay for future medical expenses, as required by the WTC Health Program, which would otherwise have been paid by workers' compensation. In such situations, the WTC Health Program may require reimbursement for treatment services of a WTC-related health condition or health condition medically associated with a WTC-related health condition directly from the member.

(2) The WTC Health Program will pay providers for treatment in accordance with § 88.22(b); to the extent that the workers' compensation insurance pays for treatment at a lower rate, the WTC Health Program will recoup treatment costs at the workers' compensation insurance rate.

(e) Where a WTC Health Program member's WTC-related health condition or health condition medically associated with a WTC-related health condition is not work-related, the WTC Health Program member's public or private health insurance plan is the primary payer. The WTC Health Program will pay costs not reimbursed by the public or private health insurance plan due to the application of deductibles, co-payments, co-insurance, other cost sharing arrangements, or payment caps up to and in accordance with the rates described in § 88.22(b).

(f) Any coordination of benefits or recoupment situation not described in paragraphs (a) through (e) of this section will be handled pursuant to WTC Health Program policies and procedures, as found on the WTC Health Program Web site.

§ 88.25 Reopening of WTC Health Program final decisions.

At any time, and without regard to whether new evidence or information is provided or obtained, the Administrator of the WTC Health Program may reopen any final decision made by the WTC Health Program pursuant to the provisions of this part. The Administrator may affirm, vacate, or modify such decision, or take any other action he or she deems appropriate.

Dated: November 22, 2016.

John Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

Dated: November 28, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–29957 Filed 12–12–16; 11:15 am]

BILLING CODE 4163–18–P

[2] As described in PHS Act, sec. 3331(b). To the extent that payment for treatment of the member's work-related condition has been made, or can reasonably be expected to be made, under any other work-related injury or illness benefit plan of the member's employer, the WTC Health Program will also attempt to recover the costs associated with treatment, including pharmacy benefits, for the member's certified WTC-related health condition or health condition medically associated with a WTC-related health condition. *See* PHS Act, sec. 3331(b)(1). For purposes of this regulation, ''workers' compensation law or plan'' or ''workers' compensation insurance'' includes any other work-related injury or illness benefit plan of the WTC Health Program member's employer.

[3] As described in PHS Act, sec. 3331(c).

Reader Aids

Federal Register

Vol. 81, No. 241

Thursday, December 15, 2016

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, DECEMBER

86555–86904 1
86905–87408 2
87409–87800 5
87801–88096 6
88097–88608 7
88609–88972 8
88973–89356 9
89357–89830 12
89831–90184 13
90185–90674 14
90675–90948 15

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9547 87397
9548 87399
9549 87401
9550 88605
9551 89355
9552 90663
9553 90665

Executive Orders:
13286 (Amended by 13753) 90667
13442 (Revoked by 13753) 90667
13749 87391
13750 87393
13751 88609
13752 90181
13753 90667
13754 90669
Orders:
Order of December 2, 2016 88607

Administrative Orders:
Presidential Determinations:
Presidential Determination 2017–03 of December 1, 2016 88973
Presidential Determination 2017–05 of December 8, 2016 90183

5 CFR

250 89357
330 86555
532 86561
731 86555
890 86905
894 86905
9801 86563

Proposed Rules:
890 ..... 86898, 86902

6 CFR

Proposed Rules:
5 88635

7 CFR

6 87801
271 ..... 89831, 90675
272 89831
273 89831
274 89831
278 ..... 89831, 90675
944 87409
980 87409
999 87409
1250 90185

Proposed Rules:
33 87486
35 87486
46 90255
271 86614
272 86614
273 86614
944 87849
980 87849
999 87849
1150 89878
1160 89878
1205 89878
1206 89878
1207 89878
1208 89878
1209 89878
1210 89878
1212 89878
1214 89878
1215 89878
1216 89878
1217 89878
1218 89878
1219 89878
1222 89878
1230 89878
1250 89878
1260 89878

10 CFR

2 86906
10 86906
26 86906
30 86906
40 86906
50 ..... 86906, 88615
55 86906
61 86906
63 86906
70 86906
71 86906
72 ..... 86906, 88097
73 86906
74 86906
100 86906
429 ..... 88098, 89276, 89806, 90072
430 ..... 89806, 90072
431 ..... 88098, 89276
609 90699

Proposed Rules:
50 89011
205 88136
430 87493

12 CFR

370 87734
602 88975
701 88412

14 CFR

1 90126
23 ..... 89843, 90126
25 ..... 86910, 88098, 90126

27.....90126
29.....88616, 90126
39 .....86567, 86912, 87412, 87417, 87419, 87422, 88619, 88621, 88623, 89367, 89371, 89373
61.....90126
71.....86570, 87802
91.....90126
121.....90126
125.....90126
135.....90126

Proposed Rules:
39 .....86627, 86630, 86975, 86977, 87494, 87496, 87499, 88143, 88145, 89397, 89878, 89881
71 .....86633, 87856, 89012, 89399, 89401, 89885
260.....90258

15 CFR

730.....87424
740.....86571
744.....90712
747.....87424
748.....87424, 87426
762.....87424
774.....87424
902.....88975
922.....87803
2004.....89846, 90715

Proposed Rules:
923.....89887

16 CFR

306.....86914

Proposed Rules:
315.....88526
1241.....89888

18 CFR

35.....87770
375.....86573
388.....86573
1301.....88998

19 CFR

12.....87804, 87805
159.....89375
173.....89375
201.....86575

20 CFR

404.....86915, 86928

Proposed Rules:
295.....89014
401.....86979

21 CFR

1.....88099, 90186
20.....89848
201.....89848
207.....89848
314.....89848
514.....89848
515.....89848
601.....89848
607.....89848
882.....87810
1271.....89848
1308.....90194

Proposed Rules:
73.....90267
1310.....89402

22 CFR

41.....88101
120.....87427
121.....87427
122.....87427
124.....87427
126.....87427
127.....87427

23 CFR

630.....86924
635.....86924

Proposed Rules:
655.....89888

24 CFR

5.....87812, 90632
91 .....86947, 87812, 89381
92 .....86947, 87812, 89381, 90632
93.....87812, 90632
100.....88627
200.....87812
214.....90632
247.....87812
570.....90632
574.....87812, 90632
576.....87812, 90632
578.....87812, 90632
880.....87812
882.....87812
883.....87812
884.....87812
886.....87812
891.....87812
905.....87812
960.....87812
965.....87430
966.....87430, 87812
982.....87812
983.....87812
1006.....90632

25 CFR

140.....86953
141.....86953
211.....86953
213.....86953
225.....86953
226.....86953
227.....86953
243.....86953
249.....86953

Proposed Rules:
15.....87501
140.....89015

26 CFR

1 .....86953, 87444, 88103, 88806, 88882, 88999, 89849
300.....86955
301.....89004, 89849
602.....87444, 88806

Proposed Rules:
1 .....87502, 88562, 88854
57.....89017, 89020
301.....89022

27 CFR

Proposed Rules:
9.....86980

28 CFR

36.....87348

Proposed Rules:
50.....89023

29 CFR

38.....87130, 88110
1988.....90196

Proposed Rules:
1904.....86987
1910.....86987, 88147
1915.....86987
1926.....86987

31 CFR

22.....89852
50.....88592, 88600
1010.....86577

32 CFR

208.....87448

Proposed Rules:
175.....88167
516.....90270

33 CFR

100.....87454
117 .....86579, 87454, 87455, 87812, 89007, 89382, 89861, 89862, 90198
165 .....87813, 88110, 88112, 88115, 89862, 89865
334.....90722

Proposed Rules:
334.....90292

34 CFR

200.....88886, 88940

36 CFR

219.....90723
1192.....90600

37 CFR

2.....89382
370.....89867
380.....87455

Proposed Rules:
201 .....86634, 86643, 86656, 90753
202 .....86634, 86643, 86656, 90753

38 CFR

17 .....88117, 89383, 90198

39 CFR

3015.....88120
3060.....88120

40 CFR

52 .....87815, 87817, 87819, 88124, 89007, 89008, 89391, 89868
80.....89746
81.....89870, 90207
82.....86778
98.....89188
122.....89320
180 .....86579, 86580, 86960, 87456, 87463, 88627
228.....87820
435.....88126
770.....89674

Proposed Rules:
49.....86988
52 .....86662, 86664, 87503, 87857, 88636, 89024, 89407, 89889, 90754, 90758
55.....89418
63.....87003, 89026
79.....90294
80.....90294
81.....86664
97.....89035
152.....87509
153.....87509
155.....87509
156.....87509
160.....87509
165.....87509
168.....87509
170.....87509
172.....87509
180.....89036

42 CFR

88.....90926
494.....90211
1001.....88368
1003.....88334, 88338
1005.....88334

Proposed Rules:
88.....90295

43 CFR

1600.....89580
3100.....88634
3170.....88634

Proposed Rules:
30.....87501
49.....88173
8360.....88173

44 CFR

64.....87467, 87470

45 CFR

75.....89393
1302.....87843
1355.....90524

Proposed Rules:
5.....88637

47 CFR

1.....86586, 90739
25.....86586, 90739
64.....87274
73.....86586
74.....86586
80.....90739
95.....90739

Proposed Rules:
2.....89890
54.....87861
73.....89424, 89890
90.....89890

48 CFR

1816.....90228
1832.....90228
1842.....90228
1852.....90228

Proposed Rules:
2.....88072
4.....88072
7.....88072
8.....88072
9.....88072
10.....88072
13.....88072
15.....88072
16.....88072
19.....88072

42.....88072
52.....88072
1816.....89038
1852.....89038

49 CFR

207.....88127
225.....88133
380.....88732
382.....87686
383.....87686, 88732
384.....87686, 88732
391.....87686
571.....90416
585.....90416
1001.....90750
1002.....90750
1122.....90229
1250.....87472

Proposed Rules:

172.....87510
175.....87510
236.....88006
238.....88006
390.....86673
391.....86673
571.....86684

50 CFR

300.....86966, 88975
600.....88975
622.....86970, 86971, 86973, 88135, 89876, 90751
635.....90241
648.....87844, 89010, 89396, 90246
660.....87845

Proposed Rules:

17.....87246, 87529, 90297, 90762
27.....88173
224.....88639
622.....90314
648.....86687, 87862
679.....87863, 87881

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 34/P.L. 114–255
21st Century Cures Act (Dec. 13, 2016; 130 Stat. 1033)
Last List December 13, 2016

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.