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# Contents

**Federal Register**

Vol. 82, No. 129

Friday, July 7, 2017

**Agency for International Development**
**NOTICES**
Meetings:
Advisory Committee on Voluntary Foreign Aid, 31548

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Food Safety and Inspection Service
*See* Grain Inspection, Packers and Stockyards Administration

**Animal and Plant Health Inspection Service**
**NOTICES**
Environmental Assessments; Availability, etc.:
Finding of No Significant Impact for the Field Release of Genetically Engineered Diamondback Moths, 31548

**Bureau of Safety and Environmental Enforcement**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Oil and Gas Drilling Operations, 31629–31634

**Census Bureau**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 31553–31554

**Centers for Medicare & Medicaid Services**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 31609–31610

**Civil Rights Commission**
**NOTICES**
Meetings; Sunshine Act, 31552–31553

**Coast Guard**
**RULES**
Regattas and Marine Parades:
Great Lakes Annual Marine Events, 31449–31450
Safety Zones:
Annual Event in the Captain of the Port Buffalo Zone—Brewerton Fireworks, 31454–31455
Lake Michigan, Whiting, IN, 31450–31452
Oswego Harborfest 2017 Breakwall and Barge Fireworks Display; Oswego Harbor, Oswego, NY, 31452–31454
Port Huron Blue Water Fest Fireworks, St. Clair River, Port Huron, MI, 31455–31457
**PROPOSED RULES**
Evaluation of Existing Coast Guard Regulations, Guidance Documents, Interpretative Documents, and Collections of Information; Extension of Comment Period, 31545–31546

**Commerce Department**
*See* Census Bureau
*See* Foreign-Trade Zones Board
*See* Industry and Security Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Education Department**
**RULES**
Elementary and Secondary Education Act, as Amended by the Every Student Succeeds Act—Accountability and State Plans, 31690–31713

**Environmental Protection Agency**
**RULES**
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Antelope Valley Air Quality Management District, 31457–31458
Pennsylvania; Volatile Organic Compound Reasonably Available Control Technology for 1997 Ozone Standard, 31464–31468
Tennessee; Non-interference Demonstration for Federal Low-Reid Vapor Pressure Requirement in Shelby County, 31462–31464
Wisconsin; Site-specific Sulfur Dioxide Requirements for USG Interiors, LLC, 31458–31462
Pesticide Tolerances:
Flonicamid, 31468–31471
Prosulfuron, 31471–31476
**PROPOSED RULES**
Air Quality State Implementation Plans; Approvals and Promulgations:
Pennsylvania; Volatile Organic Compound Reasonably Available Control Technology for 1997 Ozone Standard, 31547
Wisconsin; Site-specific Sulfur Dioxide Requirements for USG Interiors, LLC, 31546–31547
**NOTICES**
Access to Confidential Business Information:
Syracuse Research Corp. and its Identified Subcontractors, 31596–31597
Bona Fide Prospective Purchaser Settlements:
Alfred Heller Heat Treating Superfund Site, City of Clifton, Passaic County, NJ, 31593–31594
Certain New Chemicals:
Receipt and Status Information for April 2017, 31598–31602
Cross-Media Electronic Reporting:
Authorized Program Revision Approval, State of West Virginia, 31595–31596
Environmental Impact Statements; Availability, etc.:
Weekly Receipts, 31597
Meetings:
Science Advisory Board's 2017 Scientific and Technological Achievement Awards Committee, 31594–31595
Receipt of Information Under Toxic Substances Control Act, 31596
Scopes of the Risk Evaluations To Be Conducted for the First Ten Chemical Substances Under the Toxic Substances Control Act, 31592–31593

**Federal Aviation Administration**
**RULES**
2017 Revisions to the Civil Penalty Inflation Adjustment Tables; Correction, 31440

Class E Airspace; Amendments:
Arcata, CA; Fortuna, CA; and Establishment of Class E Airspace; Arcata, CA, and Eureka, CA, 31440–31442
**PROPOSED RULES**
Airworthiness Directives:
Bell Helicopter Textron Canada Limited (Bell) Helicopters, 31535–31537
**NOTICES**
Petitions for Exemption; Summaries:
Scott E. Ashton, 31672–31673

**Federal Communications Commission**
**NOTICES**
Procedures for Commission Review of State Opt-Out Request From the FirstNet Radio Access Network, 31602–31603

**Federal Highway Administration**
**NOTICES**
Federal Agency Actions:
Alaska; Proposed Gravina Access Project, 31680
Surface Transportation Project Delivery Program:
Ohio Department of Transportation Audit Report, 31673–31680

**Federal Housing Finance Agency**
**PROPOSED RULES**
2018–2020 Enterprise Housing Goals, 31514–31535

**Federal Motor Carrier Safety Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Accident Recordkeeping Requirements, 31682–31683
Hours of Service of Drivers; Exemption Applications:
American Pyrotechnics Assn., 31683–31686
Rail Delivery Services, 31680–31682

**Federal Railroad Administration**
**RULES**
Competitive Passenger Rail Service Pilot Program, 31476–31489

**Federal Reserve System**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 31603–31604
Changes in Bank Control Notices:
Acquisitions of Shares of a Bank or Bank Holding Compan, 31604
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 31603

**Federal Trade Commission**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 31604–31608

**Financial Crimes Enforcement Network**
**PROPOSED RULES**
Special Measure Against Bank of Dandong as Financial Institution of Primary Money Laundering Concern, 31537–31545
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Bank Secrecy Act Recordkeeping Requirements, 31686–31688

**Fish and Wildlife Service**
**NOTICES**
Environmental Assessments; Availability, etc.:
Activities Within Eddy County, NM, and Culberson County, TX, 31625–31627

**Food Safety and Inspection Service**
**NOTICES**
Guidance:
Importing Meat, Poultry, and Egg Products Into the United States, 31549–31550

**Foreign-Trade Zones Board**
**NOTICES**
Production Activities:
Eastman Kodak Co., Foreign-Trade Zone 106, Oklahoma City, OK, 31554–31555

**General Services Administration**
**NOTICES**
Meetings:
Presidential Commission on Election Integrity, 31608

**Grain Inspection, Packers and Stockyards Administration**
**NOTICES**
United States Standards:
Beans, 31551–31552
Lentils, 31550–31551

**Health and Human Services Department**
*See* Centers for Medicare & Medicaid Services
*See* Health Resources and Services Administration
*See* National Institutes of Health

**Health Resources and Services Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Delta States Rural Development Network Grant Program, 31612–31613
Poison Help General Population Survey, 31611–31612
Senior Executive Service Performance Review Board:
Prospective Members, 31612
Single-Source Awards:
Genesee County Health Department, 31610–31611

**Homeland Security Department**
*See* Coast Guard
*See* U.S. Customs and Border Protection

**Housing and Urban Development Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Affirmative Fair Housing Marketing Plan, 31620–31622
Appalachia Economic Development Initiative, 31619–31620
Delta Community Capital Initiative, 31624–31625
Housing Discrimination Information Form, 31618–31619
Implementation of the Housing for Older Persons Act of 1995, 31622–31624

**Industry and Security Bureau**
**RULES**
Export Administration Regulations:
Revisions to the Export Administration Regulations Based on the 2016 Missile Technology Control Regime Plenary Agreements, 31442–31449

**Institute of Museum and Library Services**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2017 Sustaining Indigenous Culture Survey: The Structure, Activities, and Needs of Tribal Archives, Libraries, and Museums Needs Assessment Survey, 31637–31638

**Interior Department**
*See* Bureau of Safety and Environmental Enforcement
*See* Fish and Wildlife Service
*See* Land Management Bureau

**International Trade Administration**
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Administrative Review; 2014–2016, 31555–31557
Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation: Final Results of Administrative Review; 2014–2015, 31559–31560
Honey From the People's Republic of China, 31557–31559

**International Trade Commission**
NOTICES
Complaints:
Certain Shielded Electrical Ribbon Cables and Products Containing the Same, 31634–31635
Investigations; Determinations, Modifications, and Rulings, etc.:
Steel Concrete Reinforcing Bar From Japan and Turkey, 31635–31636

**Labor Department**
*See* Wage and Hour Division

**Land Management Bureau**
NOTICES
Environmental Impact Statements; Availability, etc.:
Normally Pressured Lance Natural Gas Development Project, 31628–31629
Meetings:
Northwest Oregon Resource Advisory Council, 31627–31628

**National Foundation on the Arts and the Humanities**
*See* Institute of Museum and Library Services

**National Institutes of Health**
NOTICES
Meetings:
Center for Scientific Review, 31613–31614
National Eye Institute, 31614
National Institute of Allergy and Infectious Diseases, 31615
National Institute on Aging, 31613
National Institute on Deafness and Other Communication Disorders, 31614–31615
National Institute on Minority Health and Health Disparities, 31613

**National Oceanic and Atmospheric Administration**
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
2017 Accountability Measure-based Closures for Commercial and Recreational Species in the U.S. Caribbean off Puerto Rico, 31489–31491
Fisheries of the Northeastern United States:
Recreational Management Measures for the Summer Flounder and Scup Fisheries; Fishing Year 2017, 31491–31494
Fisheries Off West Coast States:
Pacific Coast Groundfish Fishery; 2017–2018 Biennial Specifications and Management Measures; Inseason Adjustments, 31494–31511
NOTICES
Meetings:
Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review; Post Data-Workshop Webinar Gulf of Mexico Gray Snapper, 31575
Fisheries of the South Atlantic; South Atlantic Fishery Management Council, 31575–31576
Fisheries of the South Atlantic; Southeast Data, Assessment, and Review, 31560–31561
Mid-Atlantic Fishery Management Council, 31561, 31579
Streamlining Regulatory Processes and Reducing Regulatory Burden, 31576–31579
Takes of Marine Mammals:
Incidental to Seattle Multimodal Construction Project in Washington State, 31579–31592
Incidental to Site Characterization Surveys off the Coast of New Jersey, 31562–31575

**Nuclear Regulatory Commission**
RULES
List of Approved Spent Fuel Storage Casks:
EnergySolutions Corp., VSC–24 Ventilated Storage Cask System, Renewal of Initial Certificate and Amendment Nos. 1–6, 31433–31440
PROPOSED RULES
List of Approved Spent Fuel Storage Casks:
EnergySolutions Corp., VSC–24 Ventilated Storage Cask System, Renewal of Initial Certificate and Amendment Nos. 1–6, 31512–31514

**Presidential Documents**
EXECUTIVE ORDERS
National Space Council; Revival (EO 13803), 31429–31432

**Securities and Exchange Commission**
NOTICES
Applications:
Vertical Capital Income Fund and Oakline Advisors, LLC, 31640–31642
Self-Regulatory Organizations; Proposed Rule Changes:
Bats BYX Exchange, Inc; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; et. al, 31656–31668
Bats BZX Exchange, Inc., 31650
Chicago Board Options Exchange, Inc., 31644
ICE Clear Europe Limited, 31648–31649
Miami International Securities Exchange, LLC, 31668–31671
Municipal Securities Rulemaking Board, 31644–31648
NASDAQ PHLX LLC, 31638–31640
NYSE Arca, Inc., 31642–31644, 31651–31656

**Small Business Administration**
**NOTICES**
Disaster Declarations:
Colorado, 31671–31672
Texas, 31672

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

**Treasury Department**
*See* Financial Crimes Enforcement Network

**U.S. Customs and Border Protection**
**NOTICES**
Determinations:
Digital Radiography System, 31615–31618

**Wage and Hour Division**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Davis-Bacon Certified Payroll, 31636–31637

**Separate Parts In This Issue**

**Part II**
Education Department, 31690–31713

**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.

**3 CFR**

**Executive Orders:**
12675 (Superseded by EO 13803)
13803.....31429

**10 CFR**
72.....31433

**Proposed Rules:**
72.....31512

**12 CFR**

**Proposed Rules:**
1282 (2 documents) .....31514

**14 CFR**
13.....31440
71.....31440

**Proposed Rules:**
39.....31535

**15 CFR**
742.....31442
744.....31442
772.....31442
774.....31442

**31 CFR**

**Proposed Rules:**
1010.....31537

**33 CFR**
100.....31449
165 (4 documents) .....31450, 31452, 31454, 31455

**Proposed Rules:**
Ch. I.....31545

**34 CFR**
200.....31690
299.....31690

**40 CFR**
52 (4 documents) .....31457, 31458, 31462, 31464
180 (2 documents) .....31468, 31471

**Proposed Rules:**
52 (2 documents) .....31546, 31547

**46 CFR**

**Proposed Rules:**
Ch. I.....31545
Ch. III.....31545

**49 CFR**
269.....31476

**Proposed Rules:**
Ch. IV.....31545

**50 CFR**
622.....31489
648.....31491
660.....31494

Federal Register
Vol. 82, No. 129
Friday, July 7, 2017

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13803 of June 30, 2017**

## Reviving the National Space Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide a coordinated process for developing and monitoring the implementation of national space policy and strategy, it is hereby ordered as follows:

**Section 1**. *Purpose.* The National Space Council (Council) was established by Title V of Public Law 100–685 and Executive Order 12675 of April 20, 1989 (Establishing the National Space Council). The Council was tasked with advising and assisting the President regarding national space policy and strategy. The Council was never formally disestablished, but it effectively ceased operation in 1993. This order revives the Council and provides additional details regarding its duties and responsibilities.

**Sec. 2**. *Revival and Composition of the National Space Council.* (a) The Council is hereby revived and shall resume operations.

(b) The Council shall be composed of the following members:

(i) The Vice President, who shall be Chair of the Council;

(ii) The Secretary of State;

(iii) The Secretary of Defense;

(iv) The Secretary of Commerce;

(v) The Secretary of Transportation;

(vi) The Secretary of Homeland Security;

(vii) The Director of National Intelligence;

(viii) The Director of the Office of Management and Budget;

(ix) The Assistant to the President for National Security Affairs;

(x) The Administrator of the National Aeronautics and Space Administration;

(xi) The Director of the Office of Science and Technology Policy;

(xii) The Assistant to the President for Homeland Security and Counterterrorism;

(xiii) The Chairman of the Joint Chiefs of Staff; and

(xiv) The heads of other executive departments and agencies (agencies) and other senior officials within the Executive Office of the President, as determined by the Chair.

**Sec. 3**. *Functions of the Council.* (a) The Council shall advise and assist the President regarding national space policy and strategy, and perform such other duties as the President may, from time to time, prescribe.

(b) In particular, the Council is directed to:

(i) review United States Government space policy, including long-range goals, and develop a strategy for national space activities;

(ii) develop recommendations for the President on space policy and space-related issues;

(iii) monitor and coordinate implementation of the objectives of the President's national space policy and strategy;

(iv) foster close coordination, cooperation, and technology and information exchange among the civil, national security, and commercial space sectors;

(v) advise on participation in international space activities conducted by the United States Government; and

(vi) facilitate the resolution of differences concerning major space and space-related policy matters.

(c) The Council shall meet at least annually.

(d) The revival and operation of the Council shall not interfere with the existing lines of authority in or responsibilities of any agencies.

(e) The Council shall have a staff, headed by a civilian Executive Secretary appointed by the President.

**Sec. 4**. *Responsibilities of the Chair.* (a) The Chair shall serve as the President's principal advisor on national space policy and strategy.

(b) The Chair shall, in consultation with the members of the Council, establish procedures for the Council and establish the agenda for Council activities.

(c) The Chair shall report to the President quarterly on the Council's activities and recommendations. The Chair shall advise the Council, as appropriate, regarding the President's directions with respect to the Council's activities and national space policy and strategy.

(d) The Chair may recommend to the President candidates for the position of Executive Secretary.

(e) The Chair, or upon the Chair's direction, the Executive Secretary, may invite the heads of other agencies, other senior officials in the Executive Office of the President, or other Federal employees to participate in Council meetings.

(f) The Chair shall authorize the establishment of committees of the Council, including an executive committee, and of working groups, composed of senior designees of the Council members and of other Federal officials invited to participate in Council meetings, as he deems necessary or appropriate for the efficient conduct of Council functions.

**Sec. 5**. *National Space Policy and Strategy Planning Process.* (a) Each agency represented on the Council shall provide such information to the Chair regarding its current and planned space activities as the Chair shall request.

(b) The head of each agency that conducts space-related activities shall, to the extent permitted by law, conform such activities to the President's national space policy and strategy.

(c) On space policy and strategy matters relating primarily to national security, the Council shall coordinate with the National Security Council (NSC) to create policies and procedures for the Council that respect the responsibilities and authorities of the NSC under existing law.

**Sec. 6**. *Users' Advisory Group.* (a) The Council shall convene a Users' Advisory Group (Group) pursuant to Public Law 101–611, section 121, composed of non-Federal representatives of industries and other persons involved in aeronautical and space activities.

(b) Members of the Group shall serve without any compensation for their work for the Group. Members of the Group, while engaged in the work of the Group, may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

(c) The Group shall report directly to the Council and shall provide advice or work product solely to the Council.

**Sec. 7**. *Administrative Provisions.* (a) To aid in the performance of the functions of the Council:

(i) The Office of Administration in the Executive Office of the President shall provide the Council with administrative support on a reimbursable basis; and

(ii) Legal advice to the Council itself with respect to its work and functions shall be provided exclusively by the Office of the Counsel to the President.

(b) To the extent practicable and permitted by law, including the Economy Act, and within existing appropriations, agencies serving on the Council and interagency councils and committees that affect space policy or strategy shall make resources, including, but not limited to, personnel, office support, and printing, available to the Council as reasonably requested by the Chair or, upon the Chair's direction, the Executive Secretary.

(c) Agencies shall cooperate with the Council and provide such information and advice to the Council as it may reasonably request, to the extent permitted by law.

**Sec. 8**. *Report.* Within 1 year of the date of this order, and annually thereafter, the Council shall submit a report to the President setting forth its assessment of, and recommendations for, the space policy and strategy of the United States Government.

**Sec. 9**. *General Provisions.* (a) This order supersedes Executive Order 12675 of April 20, 1989 (Establishing the National Space Council). To the extent this order is inconsistent with any provision of any earlier Executive Order or Presidential Memorandum, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

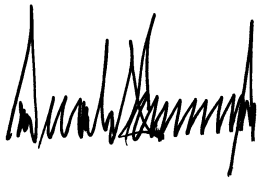
(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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

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

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

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



THE WHITE HOUSE,
*June 30, 2017.*

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# Rules and Regulations

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

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**[NRC–2016–0138]**

**RIN 3150–AJ78**

## List of Approved Spent Fuel Storage Casks: EnergySolutions™ Corporation, VSC–24 Ventilated Storage Cask System, Renewal of Initial Certificate and Amendment Nos. 1–6

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the EnergySolutions™ Corporation's (EnergySolutions or the applicant) VSC–24 Ventilated Storage Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1–6 of Certificate of Compliance (CoC) No. 1007. The renewal of the initial certificate and Amendment Nos. 1–6 requires cask users to establish, implement, and maintain written procedures for aging management program (AMP) elements, including a lead cask inspection program, for VSC–24 Storage Cask structures, systems, and components (SSC) important to safety. Users must also conduct periodic ''tollgate'' assessments of new information on SSC aging effects and mechanisms to determine whether any element of an AMP addressing these effects and mechanisms requires revision to encompass the current state of knowledge. In addition, the renewal of the initial certificate and Amendment Nos. 1–6 makes several other changes, described in Section IV, ''Discussion of Changes,'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**DATES:** This direct final rule is effective September 20, 2017, unless significant adverse comments are received by August 7, 2017. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

**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–2016–0138. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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:** Robert D. MacDougall, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5175; email: *Robert.MacDougall@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Discussion of Changes
V. Voluntary Consensus Standards
VI. Agreement State Compatibility
VII. Plain Writing
VIII. Environmental Assessment and Finding of No Significant Environmental Impact
IX. Paperwork Reduction Act Statement
X. Regulatory Flexibility Certification
XI. Regulatory Analysis
XII. Backfitting
XIII. Congressional Review Act
XIV. Availability of Documents

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2016–0138 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0138.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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–2016–0138 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 will post all comment submissions at *http://*

*www.regulations.gov* as well as enter 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 into ADAMS.

## II. Rulemaking Procedure

This direct final rule is limited to the renewal of the initial certificate and Amendment Nos. 1–6 of CoC No. 1007. The NRC is using the ''direct final rule procedure'' to issue these renewals because they represent a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

This direct final rule will become effective on September 20, 2017. However, if the NRC receives significant adverse comments on this direct final rule by August 7, 2017, the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or technical specifications (TSs).

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

## III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). A general license authorizes a reactor licensee to store spent fuel in NRC-approved casks at a site that is licensed to operate a power reactor under 10 CFR parts 50 or 52. This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17967), that approved the VSC–24 Storage Cask System design, effective May 7, 1993, and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1007.

## IV. Discussion of Changes

On October 12, 2012, EnergySolutions submitted an application to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1–6 of CoC No. 1007 for the VSC–24 Storage Cask System (ADAMS Accession No. ML12290A139). EnergySolutions supplemented its request on: February 14, 2013 (ADAMS Accession No. ML130500219); April 4, 2014 (ADAMS Accession No. ML14099A192); October 24, 2014 (ADAMS Accession No. ML14301A283); and June 26, 2015 (ADAMS Accession No. ML15182A163). Because EnergySolutions filed its renewal application at least 30 days before the certificate expiration date of May 7, 2013, pursuant to the timely renewal provisions in 10 CFR 72.240(b), the initial issuance of the certificate and Amendment Nos. 1–6 of CoC No. 1007 did not expire.

The renewals of the initial certificate and its amendments were conducted in accordance with the renewal provisions in 10 CFR 72.240. This section of NRC spent fuel storage regulations authorizes the NRC staff to include any additional certificate conditions it deems necessary to ensure that the cask system's SSCs continue to perform their intended safety functions during the certificate's renewal period. The NRC staff has included additional conditions in the renewed certificates requiring the implementation of an approved AMP to ensure that VSC–24 Storage Cask System SSCs important to safety will continue to perform their intended functions during the extended storage period authorized by the renewal. These conditions will require users of the VSC–24 Storage Cask Systems to establish, implement, and maintain written procedures for each AMP element, including the lead cask inspection program, for VSC–24 Storage Cask Systems that will continue to be in use for more than 20 years. These procedures must be consistent with the AMP descriptions in the applicant's Final Safety Analysis Report (FSAR).

The procedures must also include provisions for changing AMP elements as necessary, within the limitations specified in CoC conditions and TSs, to address new information derived from the results of AMP inspections and/or industry operating experience of aging effects. Each VSC–24 Storage Cask System general licensee must make and maintain records of periodic ''tollgate'' assessments as part of the ''Operating Experience'' element of each AMP. The purpose of these periodic tollgate assessments is to determine whether any AMP addressing an aging effect or

mechanism requires revision to encompass the current state of knowledge. In addition, each future request for an amendment to the renewed CoCs must evaluate the amendment's impacts on aging management activities for the VSC–24 Storage Cask System. This evaluation may require modifications to time-limited aging analyses (TLAAs) and AMPs, including the lead cask inspection program, as appropriate.

The renewed certificates also contain additional conditions requested by EnergySolutions. The renewed initial certificate and Amendment Nos. 1–3 of CoC No. 1007 will prohibit the construction or placement into service of new VSC–24 SSCs under these CoC specifications. General licensee users with VSC–24 Storage Cask Systems under the initial certificate or Amendment Nos. 1–3 that are in service as of the renewal's effective date, however, may continue to perform SSC maintenance and repairs in accordance with the conditions of their applicable renewed CoC. General licensees that meet the conditions of the renewed Amendment Nos. 4–6 of CoC No. 1007 may load and store spent nuclear fuel in new VSC–24 Storage Cask Systems.

This direct final rule also includes additional design and operating conditions on the initial and all amendment certificates and their corresponding TSs to preclude the use of specific cask components, and prohibit the storage of spent fuel above a certain burnup. These conditions were proposed by the certificate holder to ensure that the scope of the aging analyses provided in the renewal application extends only to VSC–24 Storage Cask System SSCs currently in service. The NRC staff confirmed that no VSC–24 Storage Cask Systems currently in service are affected by these design and operating conditions. These conditions would only apply to future VSC–24 Storage Cask System SSCs placed into service.

As documented in its safety evaluation report (SER), the NRC staff performed a detailed safety evaluation of the proposed CoC renewal request. There are no changes to the cask design or fabrication requirements in the proposed CoC renewals. Accordingly, the design of the cask would continue to prevent loss of containment, shielding, and criticality control. In its SER for the renewal of the VSC–24 Storage Cask System, the NRC has determined that if the conditions specified in the CoC to implement these regulations are met, adequate protection of public health and safety will be maintained.

This direct final rule revises the VSC–24 Storage Cask System listing in 10 CFR 72.214 by renewing for 40 more years the initial certificate and Amendment Nos. 1–6 of CoC No. 1007. The renewals consist of the changes previously described, as set forth in the renewed CoCs and their revised TSs. The revised TSs are identified in the SER.

## V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the VSC–24 Storage Cask System design listed in § 72.214, ''List of Approved Spent Fuel Storage Casks.''

This action does not constitute the establishment of a standard that contains generally applicable requirements.

## VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this direct final rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements using a mechanism consistent with the particular State's administrative procedure laws, but so informing these licensees does not confer regulatory authority on the State.

## VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

## VIII. Environmental Assessment and Finding of No Significant Environmental Impact

### *A. The Action*

The action is to amend 10 CFR 72.214 by revising the VSC–24 Storage Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1–6 of CoC No. 1007. The renewals of the initial certificate and Amendment Nos. 1–6 require each cask user to establish, implement, and maintain written procedures for AMP elements, including lead cask inspection programs, for VSC–24 Storage Cask System SSCs important to safety. Users must also conduct periodic ''tollgate'' assessments of new information on SSC aging effects and mechanisms to determine whether any element of an AMP addressing these effects and mechanisms requires revision to encompass the current state of knowledge. In addition, the renewal of the initial certificate and Amendment Nos. 1–6 makes several other changes, described in Section IV, ''Discussion of Changes,'' in the **SUPPLEMENTARY INFORMATION** section of this document. Finally, as with any NRC-approved cask system, the reactor licensee using these systems under a 10 CFR part 72 general license must also ensure that the reactor site parameters and potential site-boundary doses are within the scope of the cask system safety analysis report and reactor license.

Under the National Environmental Policy Act of 1969, as amended (NEPA), and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment (EA).

### *B. The Need for the Action*

This direct final rule is necessary to authorize the continued use of the VSC–24 Storage Cask System design by power reactor licensees for dry spent fuel storage at reactor sites. Specifically, this rule extends the expiration date for the VSC–24 Storage Cask System certificates for an additional 40 years, allowing a reactor licensee to continue using them under general license provisions in an independent spent fuel storage

installation (ISFSI), the facility at which a holder of a power reactor operating license stores spent fuel in dry casks in accordance with 10 CFR part 72.

*C. Environmental Impacts of the Action*

The environmental impacts associated with spent fuel storage have been considered in a variety of NRC environmental reviews. The NUREG–1092, ''Environmental Assessment for 10 CFR Part 72—Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste,'' is dated August 1984 (ADAMS Accession No. ML091050510). In the May 27, 1986, proposed rule (51 FR 19106) amending 10 CFR part 72 to address an NWPA requirement, the **SUPPLEMENTARY INFORMATION** section contains additional analyses showing that the potential environmental impacts from storing spent fuel in dry casks are small. The NRC also evaluated the environmental impacts of spent fuel storage at generally licensed ISFSIs in ''Environmental Assessment and Finding of No Significant Impact for Proposed Rule Entitled 'Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites,''' published in the **Federal Register** on May 5, 1989 (54 FR 19379).

On July 18, 1990 (55 FR 29181), the NRC issued a final rule amending 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. In the EA for the 1990 final rule, the NRC analyzed the potential environmental impacts of using NRC-approved storage casks. This EA for the renewal of the initial certificate and Amendment Nos. 1–6 of CoC No. 1007 tiers off of the EA for the July 18, 1990, final rule. Tiering off of past EAs is a standard process under NEPA.

The NRC staff has determined that the environmental impacts of renewing the VSC–24 Storage Cask System certificates for an additional 40 years remain bounded by the EISs and EAs previously referenced. As required by 10 CFR 72.240, applications for renewal of a spent fuel storage CoC design are required to demonstrate, in TLAAs and a description of an AMP, that SSCs important to safety will continue to perform their intended function for the requested renewal term. As discussed in the NRC staff's SER for the renewal of the VSC–24 Storage Cask System certificates, the NRC staff has approved conditions in the renewed CoCs requiring the general licensee to implement the AMPs described in the renewal application and incorporated into the storage system's FSAR. These conditions ensure that VSC–24 Storage Cask Systems will continue to perform their intended safety functions and provide adequate protection of public health and safety throughout the renewal period.

Incremental impacts from continued use of VSC–24 Storage Cask Systems under a general license for an additional 40 years are not considered significant. When the general licensee follows all procedures and administrative controls, including the conditions established as a result of this renewal, no effluents are expected from the sealed dry storage cask systems. Activities associated with cask loading and decontamination may result in some small incremental liquid and gaseous effluents, but these activities will be conducted under 10 CFR parts 50 or 52 reactor operating licenses, and effluents will be controlled within existing reactor site technical specifications. Because reactor sites are relatively large, any incremental offsite doses due to direct radiation exposure from the spent fuel storage casks are expected to be small, and when combined with the contribution from reactor operations, well within the annual dose equivalent of 0.25 mSv (25 mrem) limit to the whole body specified in 10 CFR 72.104. Incremental impacts on collective occupational exposures due to dry cask spent fuel storage are expected to be only a small fraction of the exposures from operation of the nuclear power station.

The VSC–24 Storage Cask Systems are also designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

During the promulgation of the amendments that added subpart K to 10 CFR part 72 (55 FR 29181; July 18, 1990), the NRC staff assessed the public health consequences of dry cask system storage accidents and sabotage events. In the supporting analyses for these amendments, the NRC staff determined that a release from a dry cask storage system would be comparable in magnitude to a release from the same quantity of fuel in a spent fuel storage pool. As a result of these evaluations, the NRC staff determined that, because of the physical characteristics of the storage casks and conditions of storage that include specific security provisions, the potential risk to public health and safety due to accidents or sabotage is very small.

Considering the specific design requirements for each accident or sabotage condition, the design of the cask would prevent loss of confinement, shielding, and criticality control. If there is no loss of confinement, shielding, or criticality control, the environmental impacts would be insignificant.

There are no changes to cask design or fabrication requirements in the renewed initial certificate or the renewed Amendment Nos. 1–6 that would result in an increase in occupational exposure or offsite dose rates from the implementation of the renewal of the initial certificate and Amendment Nos. 1–6. Therefore, the occupational exposure or offsite dose rates would remain well within applicable 10 CFR part 20 limits.

Decommissioning of dry cask spent fuel storage systems under a general license would be carried out as part of a power reactor's site decommissioning plan. In general, decommissioning would consist of removing the spent fuel from the site, decontaminating cask surfaces, and decontaminating and dismantling the ISFSI where the casks were deployed. The casks would then be released for reuse or disposal. Under normal and off-normal operating conditions, no residual contamination is expected to be left behind on supporting structures. The incremental impacts associated with decommissioning dry cask storage installations is expected to represent a small fraction of the impacts of decommissioning an entire nuclear power station.

In summary, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that differ significantly from the environmental impacts evaluated in the EA supporting the July 18, 1990, final rule. Compliance with the requirements of 10 CFR parts 20 and 72 would ensure that adequate protection of public health and safety will continue. The NRC, in its SER for the renewal of the VSC–24 Storage Cask System, has determined that if the conditions specified in the CoC to implement these regulations are met, adequate protection of public health and safety will be maintained.

Based on the previously stated assessments and its SER for the requested renewal of the VSC–24 Storage Cask System certificates, the NRC has determined that the expiration date of this system in 10 CFR 72.214 can be safely extended for an additional 40 years, and that commercial nuclear power reactor licensees can continue

using the system during this period under a general license without significant impacts on the human environment.

*D. Alternative to the Action*

The alternative to this action is to deny approval of the renewals and end this direct final rule. Under this alternative, the NRC would either: (1) Require general licensees using VSC–24 Storage Cask Systems to unload the spent fuel from these systems and either return it to a spent fuel pool or re-load it into a different dry storage cask system listed in 10 CFR 72.214; or (2) require that users of existing VSC–24 Storage Cask Systems request site-specific licensing proceedings to continue storage in these systems.

The environmental impacts of requiring the licensee to unload the spent fuel and either return it to the spent fuel pool or re-load it into another NRC-approved cask system would result in increased radiological doses to workers. These increased doses would be due primarily to direct radiation from the casks while the workers unloaded, transferred, and re-loaded the spent fuel. These activities would consist of transferring the dry storage canisters to a cask handling building, opening the canister lid welds, returning the canister to a spent fuel pool or dry transfer facility, removing the fuel assemblies, and re-loading them, either into a spent fuel pool storage rack or another NRC-approved dry storage system. In addition to the increased occupational doses to workers, these activities may also result in additional liquid or gaseous effluents.

Alternatively, users of the dry cask storage system would need to apply for a site-specific license. Under this option for implementing the no-action alternative, interested licensees would have to prepare, and the NRC would have to review, each separate license application, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

In summary, the no-action alternative would entail either more environmental impacts from transferring the spent fuel now in VSC–24 Storage Cask Systems, or impacts from multiple licensing actions that, in the aggregate, are likely to be less than spent fuel transfer activities but the same as, or more likely, greater than the preferred action.

*E. Alternative Use of Resources*

Renewal of the initial certificate and Amendment Nos. 1–6 of CoC No. 1007 for the VSC–24 Storage Cask System would not result in irreversible commitments of resources.

*F. Agencies and Persons Contacted*

No agencies or persons outside the NRC were contacted in connection with the preparation of this EA.

*G. Finding of No Significant Impact*

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing EA, the NRC concludes that this rule entitled, ''List of Approved Spent Fuel Storage Casks: EnergySolutions Corporation, VSC–24 Ventilated Storage Cask System, Renewal of Initial Certificate and Amendment Nos. 1–6,'' will not have a significant impact on the human environment. Therefore, the NRC has determined that an EIS is not necessary for this direct final rule.

**IX. Paperwork Reduction Act Statement**

This direct final rule does not require any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget (OMB), approval number 3150–0132.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

**X. Regulatory Flexibility Certification**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and the EnergySolutions Corporation. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

**XI. Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Under this regulation, any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if the licensee notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On April 7, 1993 (58 FR 17967), the NRC issued an amendment to 10 CFR part 72 that approved the VSC–24 Storage Cask System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214.

On October 12, 2012, EnergySolutions requested a renewal of the initial certificate and Amendment Nos. 1–6 of VSC–24's CoC No. 1007 for an additional 40 years beyond the initial certificate term (ADAMS Accession No. ML12290A139). EnergySolutions supplemented its request on: February 14, 2013 (ADAMS Accession No. ML130500219), April 4, 2014 (ADAMS Accession No. ML14099A192), October 24, 2014 (ADAMS Accession No. ML14301A283), and June 26, 2015 (ADAMS Accession No. ML15182A163). Because EnergySolutions filed its renewal application at least 30 days before the certificate expiration date of May 7, 2013, pursuant to the timely renewal provisions in 10 CFR 72.240(b), the initial issuance of the certificate and Amendment Nos. 1–6 of CoC No. 1007 did not expire.

The alternative to this action is to deny approval of the renewal of the initial certificate and Amendment Nos. 1–6 of CoC No. 1007 and end this direct final rule. Under this alternative, the NRC would either: (1) Require general licensees using VSC–24 Storage Cask Systems to unload spent fuel from these systems and return it to a spent fuel pool or re-load it into a different dry storage cask system listed in 10 CFR 72.214; or (2) require that users of existing VSC–24 Storage Cask Systems request site-specific licensing proceedings to continue storage in these systems. Therefore, the no-action alternative would entail either more environmental impacts from transferring the spent fuel now in VSC–24 Storage Cask Systems, or impacts from multiple licensing actions that, in the aggregate, are likely to be less than spent fuel transfer activities but the same as, or more likely, greater than the preferred action.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the EA, this direct final rule will have no significant adverse impact on public health and safety or the environment. This direct final rule also has no significant identifiable impact on or benefit to other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other

available alternative is believed to be as satisfactory, and therefore, this action is recommended.

**XII. Backfitting and Issue Finality**

The NRC has determined that the actions in this direct final rule do not require a backfit analysis because they either do not fall within the definition of backfitting under 10 CFR 72.62 or 10 CFR 50.109(a)(1), or they do not impact any general licensees currently using these systems. Additionally, the actions in this direct final rule do not impact issue finality provisions applicable to combined licenses under part 52.

This direct final rule renews CoC No. 1007 for the VSC–24 Storage Cask System, as currently listed in 10 CFR 72.214, ''List of Approved Spent Fuel Storage Casks,'' to extend the expiration date of the initial certificate and Amendment Nos. 1–6 by 40 years. The renewed certificates would require implementation of an AMP for the 40 years after the storage cask system's initial 20-year service period. As part of the renewal application, EnergySolutions also requested some changes to the originally-certified systems that go beyond the aging management provisions and impose additional design and operating conditions on the certificates and their corresponding TSs to preclude the use of specified cask components, and prohibit the future storage of spent fuel above a certain burnup limit.

Renewing these certificates does not, with the exceptions noted in this section, fall within the definition of backfit under 10 CFR 72.62 or 10 CFR 50.109, or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Extending the certificates' effective dates for 40 more years and requiring the implementation of AMPs does not impose any modification or addition to the design of an SSC of a cask system, or to the procedures or organization required to operate the system during the initial 20-year storage period of the system, as authorized by the current certificate. General licensees that have loaded these casks, or that load these casks in the future under the specifications of the applicable certificate, may continue to store spent fuel in these systems for the initial 20-year storage period authorized by the original certificate. The AMPs required to be implemented by this renewal are only required to be implemented after the storage cask system's initial 20-year service period ends. As explained in the 2011 final rule that amended 10 CFR part 72 (76 FR 8872, 8875, Question I), the general licensee's authority to use a particular storage cask design under an approved CoC terminates 20 years after the date that the general licensee first loads the particular cask with spent fuel, unless the cask's CoC is renewed. Because this rulemaking renews the certificates, and renewal is a separate NRC licensing action voluntarily implemented by vendors, the renewal of these CoCs is not an imposition of new or changed requirements from which these licensees would otherwise be protected by the backfitting provisions in 10 CFR 72.62 or 10 CFR 50.109.

Even if renewal of this CoC system could be considered a backfit, EnergySolutions, as the holder of the CoC and vendor of the casks, is not protected by the backfitting provisions in 10 CFR 72.62.

Unlike a vendor, general licensees using the existing systems subject to these renewals would be protected by the backfitting provisions in 10 CFR 72.62 and 10 CFR 50.109 if the renewals constituted new or changed requirements. But as previously explained, renewal of the certificates for these systems does not impose such requirements. The general licensees using these CoCs may continue storing material in their respective cask systems for the initial 20-year storage period identified in the applicable certificate or amendment with no changes. If general licensees choose to continue to store spent fuel in VSC–24 Cask Systems after the initial 20-year period, these general licensees will be required to implement AMPs for any cask systems subject to a renewed CoC, but such continued use is voluntary.

As part of the renewal application, EnergySolutions requested some changes to the originally-certified systems that go beyond the aging management provisions required by NRC regulations. Some of these changes impose additional design and operating conditions on the certificates and their corresponding TSs to preclude the use of specified cask components, and prohibit the future storage of spent fuel above a certain burnup limit. While the imposition of such conditions would be considered a backfit if the general licensees using VSC–24 Storage Cask Systems were using the prohibited components or storing spent fuel with the prohibited burnup, none of these licensees are doing so. These prohibitions were proposed by the certificate holder to avoid having to analyze aging effects that do not and will not apply to any VSC–24 Storage Cask Systems currently in service. The NRC staff confirmed that these proposed design and operating conditions do not affect any VSC–24 Storage Cask Systems currently in service (which are located at the Arkansas Nuclear One, the Point Beach, and the Palisades Nuclear Plant sites). Therefore, these additional conditions and TS changes do not constitute backfitting within the provisions of 10 CFR 72.62 or 10 CFR 50.109.

EnergySolutions also requested a condition that will prohibit the construction or placement into service of new VSC–24 SSCs under the renewed initial CoC No. 1007 certificate and Amendment Nos. 1–3, but this condition will not affect the users of existing casks. General licensees using VSC–24 Storage Cask Systems in service under the initial certificate or Amendment Nos. 1–3 as of the renewal's effective date may continue storing fuel and performing SSC maintenance and repairs in accordance with the conditions of their applicable CoC. Therefore, the requested condition affects only EnergySolutions, since it would be prohibited from manufacturing new systems under the initial certificate or Amendment Nos. 1–3 in the future. As previously mentioned, EnergySolutions, as the holder of the CoC, is not protected from backfitting by 10 CFR 72.62, and in any case, EnergySolutions itself requested the NRC to impose the condition. The vendor did not submit its request in response to new NRC requirements, nor any NRC request for an application to amend this CoC.

For these reasons, renewing the initial certificate and Amendment Nos. 1–6 of CoC No. 1007, and imposing the additional conditions previously discussed, do not constitute backfitting under 10 CFR 72.62 or 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in part 52. Accordingly, the NRC staff has not prepared a backfit analysis for this rulemaking.

**XIII. Congressional Review Act**

The OMB has not found this to be a major rule as defined in the Congressional Review Act.

**XIV. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| Document | ADAMS Accession No./ **Federal Register** citation |
|---|---|
| Proposed CoC No. 1007 Renewal, Initial Issuance | ML16057A127 |
| Proposed TS, Attachment A, CoC No. 1007 Renewal, Initial Issuance | ML16057A139 |
| Proposed CoC No. 1007 Renewal, Amendment 1 | ML16057A189 |
| Proposed TS, Attachment A, Amendment 1 | ML16057A211 |
| Proposed CoC No. 1007 Renewal, Amendment 2 | ML16057A216 |
| Proposed TS, Attachment A, Amendment 2 | ML16057A322 |
| Proposed CoC No. 1007 Renewal, Amendment 3 | ML16057A333 |
| Proposed TS, Attachment A, Amendment 3 | ML16057A358 |
| Proposed CoC No. 1007 Renewal, Amendment 4 | ML16057A449 |
| Proposed TS, Attachment A, Amendment 4 | ML16057A511 |
| Proposed CoC No. 1007 Renewal, Amendment 5 | ML16057A593 |
| Proposed TS, Attachment A, Amendment 5 | ML16057A600 |
| Proposed CoC No. 1007 Renewal, Amendment 6 | ML16057A617 |
| Proposed TS, Attachment A, Amendment 6 | ML16057A630 |
| Preliminary SER | ML16057A667 |
| Final Safety Analysis Report for the VSC–24 Ventilated Storage Cask System | ML060810682 |
| NUREG–1092, ''Environmental Assessment for 10 CFR Part 72—Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste''. | ML091050510 |
| Proposed Rule, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste''. | 51 FR 19106 |
| Environmental Assessment and Finding of No Significant Impact for Proposed Rule Entitled ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites''. | 54 FR 19379 |
| Final Rule, ''Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites'' | 55 FR 29181 |
| Final Rule, ''License and Certificate of Compliance Terms'' | 76 FR 8872 |

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2016–0138. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0138); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

**List of Subjects in 10 CFR Part 72**

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

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

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

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

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

■ 2. In § 72.214, Certificate of Compliance 1007 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

*Certificate Number:* 1007.

*Initial Certificate Effective Date:* May 7, 1993, superseded by Renewed Initial Certificate, on September 20, 2017.

*Renewed Initial Certificate Effective Date:* September 20, 2017.

*Amendment Number 1 Effective Date:* May 30, 2000, superseded by Renewed Amendment Number 1, on September 20, 2017.

*Renewed Amendment Number 1 Effective Date:* September 20, 2017.

*Amendment Number 2 Effective Date:* September 5, 2000, superseded by Renewed Amendment Number 2, on September 20, 2017.

*Renewed Amendment Number 2 Effective Date:* September 20, 2017.

*Amendment Number 3 Effective Date:* May 21, 2001, superseded by Renewed Amendment Number 3, on September 20, 2017.

*Renewed Amendment Number 3 Effective Date:* September 20, 2017.

*Amendment Number 4 Effective Date:* February 3, 2003, superseded by Renewed Amendment Number 4, on September 20, 2017.

*Renewed Amendment Number 4 Effective Date:* September 20, 2017.

*Amendment Number 5 Effective Date:* September 13, 2005, superseded by Renewed Amendment Number 5, on September 20, 2017.

*Renewed Amendment Number 5 Effective Date:* September 20, 2017.

*Amendment Number 6 Effective Date:* June 5, 2006, superseded by Renewed Amendment Number 6, on September 20, 2017.

*Renewed Amendment Number 6 Effective Date:* September 20, 2017.

*SAR Submitted by:* EnergySolutions™ Corporation.

*SAR Title:* Final Safety Analysis Report for the VSC–24 Ventilated Storage Cask System.

*Docket Number:* 72–1007.

*Renewed Certificate Expiration Date:* May 7, 2053.

*Model Number:* VSC–24.

* * * * *

Dated at Rockville, Maryland, this 31st day of May, 2017.

For the Nuclear Regulatory Commission.

**Michael R. Johnson,**

*Acting Executive Director for Operations.*

[FR Doc. 2017–14292 Filed 7–6–17; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 13

**[Docket No. FAA–2016–70104; Amdt. Nos. 13–39A]**

**RIN 2120–AK90**

## 2017 Revisions to the Civil Penalty Inflation Adjustment Tables; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting a final rule published on April 10, 2017. In that rule, the FAA amended its regulations to provide the 2017 inflation adjustment to civil penalty amounts that may be imposed for violations of FAA regulations and the Hazardous Materials Regulations, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. It also finalized the catch-up inflation adjustment interim final rule required by the same Act. The FAA inadvertently stated the effective date for the new maximums/minimums was January 15, 2017, instead of April 10, 2017. This document amends the FAA's regulations to correct that error.

**DATES:** Effective July 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Cole R. Milliard, Attorney, Office of the Chief Counsel, Enforcement Division, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3452; email *cole.milliard@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On April 10, 2017, the FAA published a final rule entitled, ''2017 Revisions to the Civil Penalty Inflation Adjustment Tables'' (82 FR 17097). In that final rule the FAA amended its regulations to provide the 2017 inflation adjustment to civil penalty maximums and minimums provided in title 14 Code of Federal Regulations (14 CFR) 13.301 and 406.9, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

In the regulatory text, the FAA inadvertently stated the effective date for the new maximums/minimums was January 15, 2017. However, the FAA intended only to apply the newly inflated maximums/minimums for violations occurring on or after April 10, 2017. Therefore, the FAA amends § 13.301(c) to reflect the intended date of April 10, 2017.

### List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

### The Correcting Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapters I of title 14, Code of Federal Regulations by making the following correction:

## PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

**Authority:** 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44701–44703, 44709–44710, 44713, 44725, 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318, 46501–46502, 46504–46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.83.

■ 2. In § 13.301, revise the heading of the table in paragraph (c) to read as follows:

**§ 13.301 Inflation adjustments of civil monetary penalties.**

* * * * *

(c) * * *

Table of Minimum and Maximum Civil Monetary Penalty Amounts for Certain Violations Occurring on or after April 10, 2017

* * * * *

Issued under the authority provided by 28 U.S.C. 2461 note, 49 U.S.C. 106(f) and 44701(a), and 51 U.S.C. 50901 in Washington, DC, on June 28, 2017.

**Lirio Liu,**

*Director, Office of Rulemaking.*

[FR Doc. 2017–14223 Filed 7–6–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2015–6751; Airspace Docket No. 15–AWP–18]**

## Amendment of Class E Airspace; Arcata, CA; Fortuna, CA; and Establishment of Class E Airspace; Arcata, CA, and Eureka, CA

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E surface area airspace, modifies Class E airspace extending upward from 700 feet, and establishes Class E airspace designated as an extension at Arcata Airport, Arcata, CA. The action also modifies Class E airspace extending upward from 700 feet at Rohnerville Airport, Fortuna, CA, and establishes stand-alone Class E airspace extending upward from 700 feet at Murray Field Airport, Eureka, CA, to accommodate airspace redesign for the safety and management of Instrument Flight Rules (IFR) operations within the National Airspace System. Additionally, this action updates the geographic coordinates of these airports.

**DATES:** Effective 0901 UTC, October 12, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: (202) 267–8783. The Order is also available for inspection 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.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**FOR FURTHER INFORMATION CONTACT:** Tom Clark, Federal Aviation Administration, Operations Support Group, Western

Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Arcata Airport, Arcata, CA, and Rohnerville Airport, Fortuna, CA, and establishes Class E airspace at Murray Field, Eureka, CA.

**History**

On March 28, 2017, the FAA published in the **Federal Register** (82 FR 15306) Docket FAA–2015–6751 a notice of proposed rulemaking (NPRM) to amend Class E airspace at Arcata Airport, Arcata, CA; and Rohnerville Airport, Fortuna, CA, and establish Class E airspace at Arcata Airport, Arcata, CA; and Murray Field Airport, Eureka, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002, 6004, and 6005, respectively, of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**Availability and Summary of Documents for Incorporation by Reference**

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E surface area airspace at Arcata Airport, Arcata, CA, and Rohnerville Airport, Fortuna, CA, and establishing Class E airspace designated as an extension at Arcata Airport. Also, stand-alone Class E airspace extending upward from 700 feet above the surface is established at Murray Field Airport, Eureka, CA. This airspace redesign is necessary for the safety and management of IFR operations at these airports, and for efficiency within the National Airspace System.

Class E surface area airspace is amended at Arcata Airport, Arcata, CA, to within a 4.1 mile radius (increased from a 4-mile radius) of the airport; and the Abeta NDB is removed from the description as it was decommissioned and no longer needed.

Class E airspace designated as an extension to a Class D or Class E surface area is established within 2.9 miles each side of the 153° bearing from Arcata Airport extending from the 4.1-mile radius to 10.5 miles southeast of the airport.

Class E airspace extending upward from 700 feet above the surface is reduced to within a 7-mile radius of Arcata Airport, with a segment 4.2 miles wide (2.1 miles each side of the 153° bearing) extending from the 7-mile radius of the airport to 14.1 miles southeast of the airport. Class E airspace extending upward from 1,200 feet above the surface at Arcata Airport is removed, since this airspace is wholly contained within the Rogue Valley Class E en route airspace area.

Class E airspace extending upward from 700 feet above the surface at Murray Field Airport, Eureka, CA, is established within a 6.3-mile radius of Murray Field Airport, with a segment 6.3 miles wide extending to 23 miles southwest of the airport. This airspace area specifically supports IFR operations at Eureka, CA.

Class E airspace extending upward from 700 feet above the surface at Rohnerville Airport, Fortuna, CA, is amended to within a 2.7-mile radius (from a 6.5-mile radius) of Rohnerville Airport, with segments extending 7 miles northwest, 5.2 miles west, and 6.1 miles southeast of the airport. Class E airspace upward from 1,200 feet above the surface at Rohnerville Airport is removed since this airspace is wholly contained within the Rogue Valley Class E en route airspace area.

This action also updates the geographic coordinates for the amended airports in the associated airspace areas to be in concert with the FAA's aeronautical database.

**Regulatory Notices and Analyses**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**AWP CA E2 Arcata, CA [Modified]**

Arcata Airport, CA
(Lat. 40°58′40″ N., long. 124°06′31″ W.)

That airspace within a 4.1-mile radius of Arcata Airport.

*Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.*

* * * * *

**AWP CA E4 Arcata, CA [New]**

Arcata Airport, CA
(Lat. 40°58′40″ N., long. 124°06′31″ W.)

That airspace extending upward from the surface within 2.9 miles each side of the 153° bearing from Arcata Airport extending from the 4.1-mile radius to 10.5 miles southeast of the airport.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AWP CA E5 Arcata, CA [Modified]**

Arcata Airport, CA
(Lat. 40°58′40″ N., long. 124°06′31″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Arcata Airport, and within 2.1 miles each side of the 153° bearing from the airport extending from the 7-mile radius to 14.1 miles southeast of the airport.

* * * * *

**AWP CA E5 Eureka, CA [New]**

Murray Field Airport, CA
(Lat. 40°48′12″ N., long. 124°06′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Murray Field Airport, and within 6.3 miles east of the Murray Field Airport 217° bearing extending from the 6.3-mile radius to 23 miles southwest of the airport.

* * * * *

**AWP CA E5 Fortuna, CA [Modified]**

Rohnerville Airport, CA
(Lat. 40°33′14″ N., long. 124°07′58″ W.)

That airspace extending upward from 700 feet above the surface within a 2.7 mile radius of Rohnerville Airport, and within 1.8 miles each side of the 326° bearing from the airport extending from the 2.7 mile radius to 7 miles northwest of the airport, and within 1.1-miles each side of the 307° bearing from the airport extending from the 2.7 mile radius to 5.2 miles west of the airport, and within 1.1-miles each side of the 113° bearing from the airport extending from the 2.7 mile radius to 6.1 miles southeast of the airport.

Issued in Seattle, Washington, on June 28, 2017.

**Sam S.L. Shrimpton,**

*Acting Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2017–14219 Filed 7–6–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Parts 742, 744, 772, and 774

**[Docket No. 170202139–7139–01]**

**RIN 0694–AH33**

## Revisions to the Export Administration Regulations Based on the 2016 Missile Technology Control Regime Plenary Agreements

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2016 Plenary in Busan, South Korea, and the March 2016 Technical Experts Meeting (TEM) in Luxembourg City, Luxembourg. This final rule revises thirteen Export Control Classification Numbers (ECCNs), adds one ECCN, revises two EAR defined terms (including making other EAR conforming changes for the use of these two terms) and makes conforming EAR changes where needed to implement the changes that were agreed to at the meetings and to better align the missile technology (MT) controls on the Commerce Control List (CCL) with the MTCR Annex.

**DATES:** This rule is effective July 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sharon Bragonje, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Phone: (202) 482–0434; Email: *sharon.bragonje@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Missile Technology Control Regime (MTCR or Regime) is an export control arrangement among 35 nations, including most of the world's suppliers of advanced missiles and missile-related equipment, materials, software and technology. The regime establishes a common list of controlled items (the Annex) and a common export control policy (the Guidelines) that member countries implement in accordance with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

In 1993, the MTCR's original focus on missiles for nuclear weapons delivery was expanded to include the proliferation of missiles for the delivery of all types of weapons of mass destruction (WMD), *i.e.,* nuclear, chemical and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to address this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the Regime's export Guidelines and to restrict the export of items contained in the Regime's Annex. The Regime's Guidelines are implemented through the national export control laws, regulations and policies of the regime members.

### Amendments to the Export Administration Regulations (EAR)

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the October 2016 Plenary in Busan, South Korea, and changes resulting from the March 2016 Technical Experts Meeting (TEM) in Luxembourg City, Luxembourg. References are provided below for the MTCR Annex changes agreed to at the meetings that correspond to the EAR revisions described below. This rule also makes changes to the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) and to other EAR provisions in order to conform with the MTCR Annex. All of the changes in this final rule align the MT controls on the CCL and other parts of the EAR with the MTCR Annex. In the discussion below, BIS identifies the origin of each change in the regulatory text of this final rule by using one the following parenthetical phrases: (Busan 2016 Plenary), (Luxembourg 2016 TEM), or (Conforming Change to MTCR Annex).

*§ 742.5 (Missile technology).* In § 742.5 (Missile technology), this final rule revises the first sentence of paragraph (a)(2), which describes the definition of ''missiles.'' The term ''missiles'' is a defined term in § 772.1, but for ease of reference the first sentence of this paragraph (a)(2) restates the definition. As described in the paragraphs below, this final rule revises the definitions of ''missiles'' and ''unmanned aerial vehicles'' in § 772.1 of the EAR, so conforming changes are needed in §§ 742.5 and 744.3, as described below.

*Conforming Change to § 742.5(a)(2).* This final rule makes conforming changes in paragraph (a)(2) of § 742.5,

by replacing the term ''ballistic missile systems'' with the term ''ballistic missiles'' (MTCR Annex Change, Category I: Item 1.A.1., Luxembourg 2016 TEM), and by replacing the term ''cruise missile systems'' with the term ''cruise missiles.'' (MTCR Annex Change, Category I: Item 1.A.2., Luxembourg 2016 TEM). This final rule also makes a conforming change by replacing the term ''unmanned air vehicles'' with the term ''unmanned aerial vehicles.'' (Conforming Change to MTCR Annex). Substantively, there is no difference between the old and revised terms, but this final rule makes these conforming changes to ensure consistent use of the terminology throughout the EAR. These conforming changes are described in more detail in the next three paragraphs, describing the changes that this final rule makes to the EAR definitions of ''missiles'' and ''unmanned aerial vehicles.''

*Conforming Change to § 744.3 (Restrictions on certain rocket systems (including ballistic missile systems and space launch vehicles and sounding rockets) and unmanned air vehicles (including cruise missile systems, target drones and reconnaissance drones) end-uses).* This final rule makes conforming changes in § 744.3 by changing the term ''ballistic missile systems'' to ''ballistic missiles'' (MTCR Annex Change, Category I: Item 1.A.1., Luxembourg 2016 TEM), and changing the term ''cruise missile systems'' to ''cruise missiles.'' (MTCR Annex Change, Category I: Item 1.A.2., Luxembourg 2016 TEM). These conforming changes are described in more detail in the next two paragraphs describing the changes that this final rule makes to the EAR definitions of ''missiles'' and ''unmanned aerial vehicles.'' In addition, this final rule makes conforming changes in § 744.3 by replacing the term ''unmanned air vehicles'' with ''unmanned aerial vehicles'' wherever this term appears in this section. (Conforming Change to MTCR Annex). Substantively, there is no difference between the old and revised terms, but this final rule makes these conforming changes to ensure consistent use of the terminology throughout the EAR. Lastly, this final rule removes the first reference to ''and'' in the section heading for the parenthetical phrase providing an illustrative list of examples of rocket systems. This ''and'' is removed because it is not needed to convey the meaning of the list of examples of rocket systems. These conforming changes are clarifications and will not change any scope of control. These changes are not expected to have any impact on the number of license applications received by BIS.

*Changes and Conforming Amendments in § 772.1 (Definitions of Terms as Used in the Export Administration Regulations (EAR)).* In § 772.1, this final rule amends the definition of the term ''missiles.'' (MTCR Annex Change, Category I: Item 1.A.1., Luxembourg 2016 TEM). Under the definition of ''missiles,'' this final rule revises the term ''ballistic missile systems'' by removing the word ''systems'' and adding an ''s'' to ''missile.'' This final rule revises the definition of ''missiles'' to reflect changes in the description of complete rocket systems in the MTCR Annex. The final rule revises the term ''ballistic missile systems'' by removing the word ''systems,'' thus referring only to the flight vehicle. This final rule makes this change to conform to the other items in the illustrative list of ''missiles,'' and to clarify that a missile is covered under these entries that use this control text, regardless of whether it is part of a larger system (*e.g.,* a system including the flight vehicle and ground support equipment such as launch, recovery, and flight control equipment). This final rule also makes conforming changes to the same terms used in ECCNs 2B018 and 5A101, as described below. This final rule also makes a conforming change in the ECCNs for the use of the term ''unmanned air vehicles,'' which this final rule replaces with ''unmanned aerial vehicles.'' (Conforming Change to MTCR Annex). Substantively, there is no difference between the two formulations of the term, but this final rule makes these conforming changes to ensure consistent use of the terminology throughout the EAR. Lastly, this final rule removes the last sentence of the definition and adds it as a note to the definition. This clarifying change is made because the sentence is more appropriately included as a note to the definition. These changes correspond with the U.S. interpretation of the controls, and will not change any scope of control. These changes are not expected to have any impact on the number of license applications received by BIS.

In addition, in § 772.1, this final rule amends the definition of the revised term, ''unmanned aerial vehicle.'' (MTCR Annex Change, Category I: Item 1.A.2., Luxembourg 2016 TEM). Under the definition of ''unmanned aerial vehicle,'' this final rule revises the term ''cruise missile systems'' by removing the word ''systems'' and adding an ''s'' to ''missile.'' The definition of ''unmanned aerial vehicles'' has been updated to reflect changes in the description of unmanned aerial vehicles in the MTCR Annex. The term ''Cruise missile systems'' has been changed by removing the word ''systems,'' thus referring only to the flight vehicle. This change both conforms to the other items in the illustrative list of unmanned aerial vehicles, and clarifies that an unmanned aerial vehicle is covered under these entries that use this control text, regardless of whether or not it is part of a larger system (*e.g.,* a system including the flight vehicle and ground support equipment such as launch, recovery, and flight control equipment). This final rule also makes conforming changes to similar text used in ECCNs 2B018 and 5A101 described below. These changes correspond with the U.S. interpretation of the controls, and will not change any scope of control. These changes are not expected to have any impact on the number of license applications received by BIS.

**Amendments to the Commerce Control List (CCL)**

In addition, this final rule amends the CCL to reflect changes to the MTCR Annex by amending thirteen ECCNs and adding new ECCN 9B104, as follows:

*ECCN 1C107.* This final rule amends ECCN 1C107 by revising the introductory text of paragraph d. and adding a paragraph d.3 in the List of Items Controlled section. This final rule also adds a Note and a Technical Note to ECCN 1C107.d.3 to clarify the scope of paragraph d.3. (MTCR Annex Change, Category II: Item 6.C.6., Busan 2016 Plenary). Specifically, in the introductory text of ECCN 1C107.d, this final rule removes the phrase ''silicon carbide materials'' and adds in its place the phrase ''high-temperature materials.'' This change is made because of the addition of certain bulk machinable ceramic composite materials that this final rule adds to ECCN 1C107 under new ''items'' paragraph d.3. Ultra High Temperature Ceramic Composites (UHTCC) are materials that combine Ultra High Temperature Ceramics (UHTC) with fiber reinforcement. The UHTCs can be used in environments that exhibit extremes in temperature, chemical reactivity, and erosive attack. The combination of the UHTC and fiber reinforcement can mitigate some of the traditional drawbacks associated with ceramics, including a tendency to fracture. Typical end uses for these composites are leading edges for hypersonic vehicles, nose tips for re-entry vehicles, rocket motor throat inserts, jet vanes, and control surfaces, which this final rule adds as examples

in the new control text. This final rule also adds a note to 1C107.d.3 to make clear that the UHTC materials that do not have fiber reinforcement are not caught under this control. Additionally, this final rule adds a technical note to 1C107.d to provide examples of UHTCs which are included. This change is expected to result in an increase of 1–3 applications received annually by BIS. This very small increase is because this material is not widely used or exported, but specific to the end uses described in the control text.

*ECCN 1C111.* This final rule amends ECCN 1C111 by revising paragraphs b.2 in the List of Items Controlled section to add a CAS (Chemical Abstract Service) Number. CAS Numbers are numerical identifiers assigned by the Chemical Abstracts Service (CAS) to every chemical substance described in open scientific literature, including organic and inorganic compounds, minerals, isotopes and alloys. The inclusion of CAS Numbers will make it easier to identify the materials controlled under this ''items'' paragraph of 1C111. This final rule revises paragraph b.2 to add the CAS Number (CAS 69102–90–5) after the material ''Hydroxy-terminated polybutadiene (including hydroxyl-terminated polybutadiene) (HTPB).'' (MTCR Annex Change, Category II: Item 4.C.5.b., Busan 2016 Plenary). This change is not expected to have any impact on the number of license applications received by BIS.

*ECCN 2B018.* This final rule amends ECCN 2B018 by revising the ''MT'' paragraph in the table in the License Requirements section by revising the term ''ballistic missile systems'' to remove the term ''systems'' and add an ''s'' to the term ''missile.'' (MTCR Annex Change, Category I: Item 1.A.1., Luxembourg 2016 TEM). In addition, in the same ''MT'' paragraph, this final rule revises the term ''cruise missile systems'' to remove the term ''systems'' and add an ''s'' to the term ''missile.'' (MTCR Annex Change, Category I: Item 1.A.2., Luxembourg 2016 TEM). Lastly, this final rule makes conforming changes in the same ''MT'' paragraph by replacing the term ''unmanned air vehicles'' with ''unmanned aerial vehicles'' wherever this term appears in this section. (Conforming Change to MTCR Annex). Substantively, there is no difference between the old and revised terms, but this final rule makes these conforming changes to ensure consistent use of the terminology throughout the EAR. These are conforming changes for the changes described above to the definitions of ''missiles'' and ''unmanned aerial vehicles.'' This is a clarification and will not change any scope of control. This change is not expected to have any impact on the number of license applications received by BIS.

*ECCN 2B109.* This final rule amends ECCN 2B109 by revising the list of examples included in the second technical note. This final rule expands the list of examples to include interstages, because interstages can also be manufactured using the flow forming machines described in ECCN 2B109. (MTCR Annex Change, Category II: Item 3.B.3., Busan 2016 Plenary). This change is not expected to have any impact on the number of license applications received by BIS, because this is only a change to the list of examples of products that can be made by this type of machine, and it does not change the scope of control.

*ECCN 5A101.* This final rule amends the heading of ECCN 5A101 by revising the term ''ballistic missile systems'' to remove the word ''systems'' and add an ''s'' to ''missile.'' (MTCR Annex Change, Category I: Item 1.A.1., Luxembourg 2016 TEM). The final rule revises the heading by revising the term ''cruise missile systems'' to remove the word ''systems'' and add an ''s'' after ''missile.'' (MTCR Annex Change, Category I: Item 1.A.2., Luxembourg 2016 TEM). These are conforming changes for the changes described above to the definitions of ''missiles'' and ''unmanned aerial vehicles.'' In addition, this final rule revises the heading of ECCN 5A101 to create a separate parenthetical phrase for the illustrative list of examples that are unmanned aerial vehicles. This final rule does this by removing the examples of ''cruise missiles, target drones, and reconnaissance drones'' from the list of examples that followed the terms ''unmanned aerial vehicle or rocket systems'' in the heading and adding those examples immediately after the term unmanned aerial vehicle. This final rule retains the rest of the examples from the parenthetical that follows the term ''rocket systems,'' which will make it clearer that this parenthetical list is an illustrative list of ''rocket systems.'' (Conforming Change to MTCR Annex). These are clarifications and will not change any scope of control. These changes are not expected to have any impact on the number of license applications received by BIS.

*ECCN 7A103.* This final rule amends ECCN 7A103 by adding a definition for ''inertial measurement equipment and systems'' for purposes of ECCN 7A103. In addition, this final rule revises ''items'' paragraph a and adds Note 3 in the List of Items Controlled section. (MTCR Annex Change, Category II: Item 9.A.6., Luxembourg 2016 TEM). This final rule makes these changes to remove the ambiguous term ''other equipment.'' Instead, the locally defined term ''inertial measurement equipment or systems'' that the final rule adds to ECCN 7A103, along with an illustrative list of such equipment and systems, clarifies which types of equipment containing the specified accelerometers or gyros are caught by this entry. This final rule also removes the phrase ''and systems incorporating such equipment'' because this phrase has been removed from the MTCR Annex. The changes this final rule makes to ECCN 7A103 to increase the clarity of the control should make the control more precise and rule out items not strictly used for navigation purposes. This change is expected to result in a decrease of 3 to 5 license applications received annually by BIS. Lastly, this final rule updates and amends ECCN 7A103 by removing Related Controls paragraph (2), which is no longer accurate after changes were made to the EAR to correspond with changes made to USML Category XII (especially for unmanned aerial vehicles (UAVs) ) that became effective December 31, 2016 (*See* October 12, 2016, (81 FR 70320) final rule). In addition, this paragraph (2) can be removed because the USML Order of Review and CCL Order of Review will provide sufficient guidance on where items that are subject to the ITAR are classified under the USML and where items that are subject to the EAR are classified in either the ''600 series'' or in other ECCNs in Category 7 of the CCL. Lastly, as a conforming change to the removal of paragraph (2), this final rule redesignates Related Controls paragraph (3) as new Related Controls paragraph (2).

*ECCNs 9A101, 9E101, and 9E102.* This final rule amends ECCN 9E101 by revising the Related Controls paragraph in the List of Items Controlled section to make a conforming change for the use of the term ''unmanned air vehicles,'' which this final rule changes to ''unmanned aerial vehicles.'' In addition, this final rule amends ECCN 9E101 and 9E102 by revising the headings of these two ECCNs to make conforming changes for the use of the term ''unmanned air vehicles,'' which this final rule changes to ''unmanned aerial vehicles.'' Substantively, there is not a difference in the two formulations of the term, but for consistency with how the term is used in other parts of the EAR, this final rule makes these conforming changes. (Conforming Change to MTCR Annex). This is a

clarification and will not change any scope of control. These changes are not expected to have any impact on the number of license applications received by BIS.

*New ECCN 9B104 and Related Conforming Amendments to 9D101, 9E001, and 9E002.* This final rule adds new ECCN 9B104 to control certain aerothermodynamic test facilities. The facilities controlled under this new ECCN 9B104 are those that are usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems, and having an electrical power supply equal to or greater than 5 MW or a gas supply total pressure equal to or greater than 3 MPa. This final rule adds this new ECCN 9B104 to complement the controls that already exist for aerodynamic test facilities in order to fully cover the types of ground test facilities necessary to reproduce the flight environments that occur during the reentry phase. Plasma arc jet and plasma wind tunnel facilities simulate the atmospheric reentry thermal effects due to high velocity around the vehicles and are key to the qualification of vehicle thermal protection subsystems. This final rule includes values for electrical power supply and gas supply total pressure in new ECCN 9B104 to exclude commercial systems of a similar nature from this new ECCN.

In addition, this final rule adds a Related Definition as part of new ECCN 9B104 to define the term ''aerothermodynamic test facilities''. This definition specifies that these facilities include plasma arc jet facilities and plasma wind tunnels for the study of thermal and mechanical effects of airflow on objects. (MTCR Annex Change, Category II: Item 15.B.6., Luxembourg 2016 TEM). As a conforming change to the addition of ECCN 9B104, this final rule adds 9B104 to the heading of ECCN 9D101 and revises the ''MT'' paragraph in the table in the License Requirements section of ECCNs 9E001 and 9E002 to add 9B104. The headings of ECCNs 9E001 and 9E002 do not need to be revised to add technology for 9B104, because those two technology ECCNs apply to 9B ECCNs, except for those specifically excluded in the ECCN headings. These changes are expected to result in an increase of no more than 1 application received annually by BIS, because such systems and their software and technology are exported infrequently.

*ECCN 9D104.* This final rule amends ECCN 9D104 by adding a note to the List of Items Controlled section. This note clarifies that ECCN 9D104 also includes specific software for the conversion of manned aircraft to an unmanned aerial vehicle. (MTCR Annex Change, Category II: Item 1.D.2., Luxembourg 2016 TEM). This change is expected to result in an increase of 1 to 2 applications received annually by BIS, because, although this software was already controlled here, the note will clarify the scope of ECCN 9D104.

**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 on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or enroute aboard a carrier to a port of export or reexport, on July 7, 2017, 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) so long as they are exported or reexported before August 7, 2017. Any such items not actually exported or reexported before midnight, on August 7, 2017, require a license in accordance with this rule.

**Export Administration Act of 1979**

Although the Export Administration Act of 1979 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 of 1979, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

**Executive Order Requirements**

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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. The MTCR was formed in 1987 by the U.S. and G–7 countries (Canada, France, Germany, Italy, Japan, and the UK) to address the increasing proliferation of nuclear weapons by addressing the most destabilizing delivery system for such weapons. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons. The proliferation of such weapons has been identified as a threat to domestic and international peace and security. Commerce estimates this rule will increase the number of license requests by fewer than four annually.

This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

For the purposes of E.O. 13771, this rule is issued with respect to a national security function of the United States. The cost-benefit analysis indicates the rule is intended to improve national security as its primary direct benefit, and the regulation qualifies for a good cause exception under 5 U.S.C. 553(b)(B). Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing E.O 13771, and is, therefore, exempt from the requirements of E.O. 13771.

**Paperwork Reduction Act Requirements**

Notwithstanding any other provision of law, no person may be required to respond to or 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 a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 43.8 minutes for a manual or electronic submission for a total burden estimate of 31,833 hours. BIS expects the burden hours associated with this collection to increase slightly by 2 hours and 19 minutes for an estimated cost increase of $85. This increase is not expected to exceed the existing estimates currently associated with OMB control number 0694–0088. Although this final rule makes important changes to the EAR for

items controlled for missile technology reasons, Commerce believes the overall increase in costs and burdens due to this rule will be minimal.

Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent 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.

**Administrative Procedure Act and Regulatory Flexibility Act Requirements**

The provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this action involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international commitments to the MTCR. The MTCR contributes to international peace and security by promoting greater responsibility in transfers of missile technology items that could make a contribution to delivery systems (other than manned aircraft) for weapons of mass destruction. The MTCR consists of 35 member countries acting on a consensus basis. The changes discussed in this rule implement agreements reached at the October 2016 Plenary in Busan, South Korea, and the March 2016 Technical Experts Meeting in Luxembourg City, Luxembourg. Since the United States is a significant exporter of the items discussed in this rule, implementation of this provision is necessary for the MTCR to achieve its purpose.

Although the APA requirements in section 553 are not applicable to this action under the provisions of paragraph (a)(1), this action also falls within two other exceptions in the section. The subsection (b) requirement that agencies publish a notice of proposed rulemaking that includes information on the public proceedings does not apply when an agency for good cause finds that the notice and public procedures are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the finding (and reasons therefor) in the rule that is issued (5 U.S.C. 553(b)(B)). In addition, the section 553(d) requirement that publication of a rule shall be made not less than 30 days before its effective date can be waived if an agency finds there is good cause to do so.

The section 553 requirements for notice and public procedures and for a delay in the date of effectiveness do not apply to this rule, as there is good cause to waive such practices. Delay in implementation would disrupt the movement of these potentially national- and international-security-threatening items globally, creating disharmony between export control measures implemented by MTCR members. Export controls work best when all countries implement the same export controls in a timely manner. Delaying this rulemaking would prevent the United States from fulfilling its commitment to the MTCR in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and may impair the international communities' ability to effectively control the export of certain potentially national- and international-security-threatening materials. Therefore, this regulation is issued in final form, and is effective July 7, 2017.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

**List of Subjects**

*15 CFR Part 742*

Exports, Terrorism.

*15 CFR Part 744*

Exports, Reporting and recordkeeping requirements, Terrorism.

*15 CFR Part 772*

Exports.

*15 CFR Part 774*

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 742, 744, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

## PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of November 8, 2016, 81 FR 79379 (November 10, 2016).

■ 2. Section 742.5 is amended by revising the first sentence of paragraph (a)(2) to read as follows:

**§ 742.5 Missile technology.**

(a) * * *

(2) The term ''missiles'' is defined as rocket systems (including ballistic missiles, space launch vehicles, and sounding rockets) and unmanned aerial vehicle systems (including cruise missiles, target drones, and reconnaissance drones) capable of delivering at least 500 kilograms (kg) payload to a range of at least 300 kilometers (km). * * *

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## PART 744—[AMENDED]

■ 3. 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 January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016); Notice of November 8, 2016, 81 FR 79379 (November 10, 2016); Notice of January 13, 2017, 82 FR 6165 (January 18, 2017).

■ 4. Section 744.3 is amended:

■ a. By revising the section heading;

■ b. By revising paragraphs (a)(1), (2), (3), and the Note to paragraph (a) of this section;

■ c. By revising paragraph (d)(1); and

■ d. By revising paragraph (d)(2)(ii), (iii), and (v) to read as follows:

**§ 744.3 Restrictions on certain rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned aerial vehicles (including cruise missiles, target drones and reconnaissance drones) end-uses.**

(a) * * *

(1) Will be used in the design, development, production or use of rocket systems or unmanned aerial

vehicles capable of a range of at least 300 kilometers in or by a country listed in Country Group D:4 of Supplement No. 1 to part 740 of the EAR.

(2) Will be used, anywhere in the world except by governmental programs for nuclear weapons delivery of NPT Nuclear Weapons States that are also members of NATO, in the design, development, production or use of rocket systems or unmanned aerial vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons; or

(3) Will be used in the design, development, production or use of any rocket systems or unmanned aerial vehicles in or by a country listed in Country Group D:4, but you are unable to determine:

(i) The characteristics (*i.e.,* range capabilities) of the rocket systems or unmanned aerial vehicles, or

(ii) Whether the rocket systems or unmanned aerial vehicles, regardless of range capabilities, will be used in a manner prohibited under paragraph (a)(2) of this section.

**Note to paragraph (a) of this section:** For the purposes of this section, ''Rocket Systems'' include, but are not limited to, ballistic missiles, space launch vehicles, and sounding rockets. Also, for the purposes of this section, ''unmanned aerial vehicles'' include, but are not limited to, cruise missiles, target drones and reconnaissance drones.

* * * * *

(d) * * *

(1) Applications to export, reexport or transfer (in-country) the items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport or transfer (in-country) would make a material contribution to the proliferation of certain rocket systems, or unmanned aerial vehicles. When an export, reexport or transfer (in-country) is deemed to make a material contribution, the license will be denied.

(2) * * *

(ii) The significance of the export, reexport or transfer in terms of its contribution to the design, development, production or use of certain rocket systems or unmanned aerial vehicles;

(iii) The capabilities and objectives of the rocket systems or unmanned aerial vehicles of the recipient country;

* * * * *

(v) The types of assurances or guarantees against design, development, production, or use for certain rocket system or unmanned aerial vehicle delivery purposes that are given in a particular case; and

* * * * *

## PART 772—[AMENDED]

■ 5. The authority citation for 15 CFR part 772 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783 Notice of August 8, 2016, 81 FR 52587 (August 8, 2016).

■ 6. Section 772.1 is amended by revising the definitions of ''missiles'' and ''unmanned aerial vehicle (''UAV'')'' to read as follows:

**§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).**

* * * * *

''*Missiles*''. (All) Rocket systems (including ballistic missiles, space launch vehicles, and sounding rockets) and unmanned aerial vehicle systems (including cruise missiles, target drones, and reconnaissance drones) ''capable of'' delivering at least 500 kilograms payload to a range of at least 300 kilometers. See § 746.3 for definition of a ''ballistic missile'' to be exported or reexported to Iraq or transferred within Iraq.

* * * * *

''*Unmanned aerial vehicle*'' *(''UAV'').* (Cat 9) Any ''aircraft'' capable of initiating flight and sustaining controlled flight and navigation without any human presence on board.

**Note to definition of ''Unmanned aerial vehicle'' (''UAV''):** For the purposes of § 744.3 of the EAR, unmanned air vehicles, which are the same as ''unmanned aerial vehicles,'' include, but are not limited to, cruise missiles, target drones and reconnaissance drones.

* * * * *

## PART 774—[AMENDED]

■ 7. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C107 is amended:

■ a. By revising the introductory text of ''items'' paragraph d. in the List of Items Controlled section; and

■ b. By adding paragraph d.3., including a Note and a Technical Note to 1C107.d.3., to read as follows:

**Supplement No. 1 to Part 774—The Commerce Control List**

* * * * *

**1C107 Graphite and ceramic materials, other than those controlled by 1C007, which can be machined to any of the following products as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Items:*

d. High-temperature ceramic materials, useable in rockets, missiles, and unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, as follows:

* * * * *

d.3. Bulk machinable ceramic composite materials consisting of an 'Ultra High Temperature Ceramic (UHTC)' matrix with a melting point equal to or greater than 3000 °C and reinforced with fibers or filaments, usable for missile components (such as nose tips, re-entry vehicles, leading edges, jet vanes, control surfaces, or rocket motor throat inserts).

**Note:** ECCN 1C107.d.3. does not control 'Ultra High Temperature Ceramic (UHTC)' materials in non-composite form.

**Technical Note:** 'Ultra High Temperature Ceramics (UHTC)' includes: Titanium diboride ($TiB_2$), zirconium diboride ($ZrB_2$), niobium diboride ($NbB_2$), hafnium diboride ($HfB_2$), tantalum diboride ($TaB_2$), titanium carbide (TiC), zirconium carbide (ZrC), niobium carbide (NbC), hafnium carbide (HfC), tantalum carbide (TaC).

* * * * *

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C111 is amended by revising ''items'' paragraph b.2. in the List of Items Controlled section to read as follows:

**1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Items:*

* * * * *

b. * * *

b.2. Hydroxy-terminated polybutadiene (including hydroxyl-terminated polybutadiene) (HTPB) (CAS 69102–90–5), except for hydroxyl-terminated polybutadiene as specified in USML Category

V (see 22 CFR 121.1) (also see Related Controls Note #1 for this ECCN);

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B018 is amended by revising the ''MT'' paragraph in the table in the License Requirements section to read as follows:

**2B018 Equipment on the Wassenaar Arrangement Munitions List.**

**License Requirements**

*Reason for Control:* * * *

| *Control(s)* | *Country chart* (See Supp. No. 1 to part 738) |
|---|---|
| * * * * * | |
| MT applies to specialized machinery, equipment, and gear for producing rocket systems (including ballistic missiles, space launch vehicles, and sounding rockets) and unmanned aerial vehicle systems (including cruise missiles, target drones, and reconnaissance drones) usable in systems that are controlled for MT reasons including their propulsion systems and components, and pyrolytic deposition and densification equipment. | MT Column 1 |
| * * * * * | |

* * * * *

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B109 is amended by revising Technical Note paragraph 2. at the end of the ''items'' paragraph in the List of Items Controlled section to read as follows:

**2B109 Flow-forming machines, other than those controlled by 2B009, and ''specially designed'' ''parts'' and ''components'' therefor.**

* * * * *

**List of Items Controlled**

* * * * *

Items:

* * * * *

**Technical Notes:**

* * * * *

2. 2B109 does not control machines that are not usable in the ''production'' of propulsion ''parts,'' ''components'' and equipment (*e.g.,* motor cases and interstages) for ''missiles.''

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5A101 is amended:

■ a. By revising the heading, and

■ b. By revising the Note at the end of the ''items'' paragraph to read as follows:

**5A101 Telemetering and telecontrol equipment, including ground equipment, designed or modified for unmanned aerial vehicle (including cruise missiles, target drones, and reconnaissance drones) or rocket systems (including ballistic missiles, space launch vehicles, and sounding rockets) capable of a maximum ''range'' equal to or greater than 300 km.**

* * * * *

**List of Items Controlled**

* * * * *

Items:

* * * * *

**Note:** ECCN 5A101 does not include items not designed or modified for unmanned aerial vehicles (including cruise missiles, target drones, and reconnaissance drones) or rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) capable of a maximum ''range'' equal to or greater than 300km (*e.g.*, telemetry circuit cards limited by design to reception only and designed for use in personal computers).

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A103 is amended:

■ a. By removing the Related Controls paragraph (2) and redesignating Related Controls paragraph (3) as Related Controls paragraph (2) in the List of Items Controlled section;

■ b. By revising the Related Definitions paragraph in the List of Items Controlled section;

■ c. By revising the introductory text of ''items'' paragraph a. in the List of Items Controlled section; and

■ d. By adding a Note 3 to ''items'' paragraph a. in the List of Items Controlled section to read as follows:

**7A103 Instrumentation, navigation equipment and systems, other than those controlled by 7A003, and ''specially designed'' ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Related Definitions:* 'Inertial measurement equipment or systems' specified in 7A103.a. incorporate accelerometers or gyros to measure changes in velocity and orientation in order to determine or maintain heading or position without requiring an external reference once aligned.

Items:

a. 'Inertial measurement equipment or systems' using accelerometers or gyros controlled by 7A001, 7A002, 7A101 or 7A102, and ''specially designed'' ''parts'' and ''components'' therefor;

* * * * *

**Note 3:** 7A103.a. includes Attitude and Heading Reference Systems (AHRSs), gyrocompasses, Inertial Measurement Units (IMUs), Inertial Navigations Systems (INSs), Inertial Reference Systems (IRSs), and Inertial Reference Units (IRUs).

* * * * *

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A101 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

**9A101 Turbojet and turbofan engines, other than those controlled by 9A001, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Related Controls: 9A101.b* controls only engines for non-military unmanned aerial vehicles [UAVs] or remotely piloted vehicles [RPVs], and does not control other engines designed or modified for use in ''missiles'', which are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add, between entries for Export Control Classification Numbers (ECCNs) 9B010 and 9B105, ECCN 9B104 to read as follows:

**9B104 'Aerothermodynamic test facilities', usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems, and having an electrical power supply equal to or greater than 5 MW or a gas supply total pressure equal to or greater than 3 MPa.**

**License Requirements**

*Reasons for Control:* MT, AT

| *Control(s)* | *Country Chart* (See Supp. No. 1 to part 738) |
|---|---|
| MT applies to entire entry. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a description of all license exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* See ECCNs 9D101, 9E001 and 9E002.
*Related Definitions:* 'Aerothermodynamic test facilities' include plasma arc jet facilities and plasma wind tunnels for the study of thermal and mechanical effects of airflow on objects.
*Items:*

The list of items controlled is contained in the ECCN heading.

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D101 is amended by revising the heading to read as follows:

**9D101 ''Software'' ''specially designed'' or modified for the ''use'' of commodities controlled by 9B104, 9B105, 9B106, 9B116, or 9B117.**

* * * * *

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D104 is amended by adding a Note to the ''items'' paragraph in the List of Items Controlled section to read as follows:

**9D104 ''Software'' specially designed or modified for the ''use'' of equipment controlled by ECCN 9A001, 9A012 (for MT controlled items only), 9A101 (except for items in 9A101.b that are ''subject to the ITAR,'' see 22 CFR part 121), or 9A106.d.**

* * * * *

**List of Items Controlled**

* * * * *

Items:

* * * * *

**Note:** For a manned aircraft converted to operate as an unmanned aerial vehicle specified in 9A012 and controlled for MT reasons, 9D104 includes ''software'', as follows:

a. ''Software'' ''specially designed'' or modified to integrate the conversion equipment with the aircraft system functions;

b. ''Software'' ''specially designed'' or modified to operate the aircraft as an unmanned aerial vehicle.

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E001 is amended by revising the ''MT'' paragraph in the table in the License Requirements section to read as follows:

**9E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software'', controlled by 9A001.b, 9A004, 9A012, 9B (except for ECCNs 9B604, 9B610, 9B619, 9B990 and 9B991), or ECCN 9D001 to 9D004, 9D101, or 9D104.**

**License Requirements**

*Reason for Control:* * * *

| *Control(s)* | *Country chart* (See Supp. No. 1 to part 738) |
|---|---|
| * * * * * | |
| MT applies to ''technology'' for items controlled by 9A012, 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B104, 9B105, 9B106, 9B115, 9B116, 9B117, 9D001, 9D002, 9D003, or 9D004 for MT reasons. | MT Column 1 |
| * * * * * | |

* * * * *

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E002 is amended by revising the ''MT'' paragraph in the table in the License Requirements section to read as follows:

**9E002 ''Technology'' according to the General Technology Note for the ''production'' of ''equipment'' controlled by ECCN 9A001.b, 9A004 or 9B (except for ECCNs 9B117, 9B604, 9B610, 9B619, 9B990, and 9B991).**

**License Requirements**

*Reason for Control:* * * *

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| * * * * * | |
| MT applies to ''technology'' for equipment controlled by 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B104, 9B105, 9B106, 9B115 or 9B116 for MT reasons. | MT Column 1 |
| * * * * * | |

* * * * *

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E101 is amended by revising the heading to read as follows:

**9E101 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of commodities or ''software'' controlled by ECCN 9A012 (applies only to ''production'' ''technology'' for MT-controlled items in 9A012), 9A101 (except for items in 9A101.b that are ''subject to the ITAR,'' see 22 CFR part 121), 9A106.d or .e, 9A110 (for items that are ''specially designed'' for non-military unmanned aerial vehicles controlled by 9A012), 9C110, 9D101, or 9D104.**

* * * * *

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E102 is amended by revising the heading to read as follows:

**9E102 ''Technology'' according to the General Technology Note for the ''use'' of commodities or ''software'' controlled by ECCN 9A004 (except for items in 9A004 that are ''subject to the ITAR,'' see 22 CFR part 121), 9A012, 9A101 (except for items in 9A101.b that are ''subject to the ITAR,'' see 22 CFR part 121), 9A106.d or .e, 9A110 (for items that are ''specially designed'' for non-military unmanned aerial vehicles controlled by 9A012), 9B105, 9B106, 9B115, 9B116, 9D101, or 9D104.**

* * * * *

Dated: July 3, 2017.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 2017–14312 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2017–0492]**

**RIN 1625–AA08**

## [Regattas and Marine Parades; Great Lakes Annual Marine Events

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce various special local regulations for annual regattas and marine parades in the Captain of the Port Detroit zone. Enforcement of these regulations is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and after

these regattas or marine parades. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and after regattas or marine parades.

**DATES:** The regulations in 33 CFR 100.914, 100.915, 100.919, 100.927, 100.928 will be enforced without actual notice at specified dates and times from July 7, 2017 until September 23, 2017. For the purposes of enforcement, actual notice will be used from June 23, 2017, until July 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call or email Tracy Girard, Prevention Department, telephone (313) 568–9564, email *Tracy.M.Girard@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the following special local regulations listed in 33 CFR part 100, Safety of Life on Navigable Waters, on the following dates and times:

(1) *§ 100.919 International Bay City Grand Prix (formerly Bay City River Roar), Bay City, MI.* This special local regulation will be enforced from 10 a.m. to 7 p.m. each day from June 23 through June 25, 2017.

(2) *§ 100.914 Trenton Rotary Roar on the River, Trenton, MI.* This special local regulation will be enforced from 8 a.m. to 8 p.m. each day from July 14 through July 16, 2017.

(3) *§ 100.915 St. Clair River Classic Offshore Race, St. Clair, MI.* This special local regulation will be enforced from 10 a.m. to 7 p.m. each day from July 24 through July 30, 2017.

(4) *§ 100.928 Frogtown Race Regatta, Toledo, OH.* This special local regulation will be enforced from 5 a.m. to 7 p.m. on September 23, 2017.

(5) *§ 100.927 Partnership in Education, Dragon Boat Festival, Toledo, OH.* This special local regulation will be enforced from 6 a.m. to 6 p.m. on July 22, 2017.

### Special Local Regulations

In accordance with § 100.901, entry into, transiting, or anchoring within these regulated areas is prohibited unless authorized by the Coast Guard patrol commander (PATCOM). The PATCOM may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

Vessels permitted to enter this regulated area must operate at a no-wake speed and in a manner that will not endanger race participants or any other craft.

The PATCOM may direct the anchoring, mooring, or movement of any vessel within this regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from the area, a Notice of Violation for failure to comply, or both.

If it is deemed necessary for the protection of life and property, the PATCOM may terminate the marine event or the operation of any vessel within the regulated area.

In accordance with the general regulations in § 100.35 of this part, the Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign ''Coast Guard Patrol Commander.''

Under the provisions of 33 CFR 100.928, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for event participants and safety craft. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by the Coast Guard's on-scene representative or by event representatives during the event.

The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The on-scene representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated on scene representative may be contacted via VHF Channel 16.

The rules in this section shall not apply to vessels participating in the event or to government vessels patrolling the regulated area in the performance of their assigned duties.

This document is issued under authority of 33 CFR 100.35 and 5 U.S.C. 552(a). If the Captain of the Port determines that any of these special local regulations need not be enforced for the full duration stated in this document, he may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: June 29, 2017.

**J.W. Novak,**

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

[FR Doc. 2017–14269 Filed 7–6–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2017–0195]**

**RIN 1625–AA00**

## Safety Zone; Lake Michigan, Whiting, Indiana

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Michigan, near Whiting, Indiana. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and after a high speed competition involving personal water craft. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan.

**DATES:** This rule is effective from 7 a.m. on August 12, 2017 to 5 p.m. on August 13, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0195 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email LT John Ramos, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2156, email *D09–DG–MSUChicago-Waterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are impracticable, unnecessary, or contrary to public interest. Under 5 U.S.C.

553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard did not receive the final details for this event until there was insufficient time remaining before the event to publish a NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with the high speed competition involving personal water craft on August 12, 2017, and August 13, 2017.

**III. Legal Authority and Need for Rule**

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

On August 12, 2017, and August 13, 2017, a high speed competition involving personal watercraft will take place on Lake Michigan near Whiting, Indiana. The Captain of the Port Lake Michigan has determined that this competition will pose a significant risk to public safety and property. Such hazards include collisions among participants or spectator vessels. This rule is needed to protect personnel and vessels in the navigable waters within the safety zone while the competition is taking place.

**IV. Discussion of the Rule**

With the aforementioned hazards in mind, the Captain of the Port Lake Michigan has determined that this temporary safety zone is necessary to ensure the safety of the public during the high speed competition involving personal watercraft on Lake Michigan. This safety zone will be enforced from 7 a.m. to 5 p.m. on August 12, 2017 and from 7 a.m. to 5 p.m. on August 13, 2017. This zone will encompass all waters of Lake Michigan near Whiting, Indiana bounded by a line drawn from the shoreline at 41°41.235′ N, 087°29.779′ W., then northeast to 41°41.494′ N., 087°29.559′ W., then south to 41°40.891′ N., 087°28.486′ W., then southwest to the shoreline at 41°40.725′ N., 087°28.633′ W., then along the shoreline back to the point of origin at 41°41.235′ N., 087°29.779′ W. (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16.

**V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced only on August 12, 2017 from 7 a.m. to 5 p.m., and August 13, 2017, from 7 a.m. to 5 p.m. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

*B. Impact on Small Entities*

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

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit on a portion of the Lake Michigan near Whiting, Indiana on August 12, 2017 from 7 a.m. to 5 p.m., and August 13, 2017 from 7 a.m. to 5 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we will issue local Broadcast Notice to Mariners and Local Notice to Mariners so vessel owners and operators can plan accordingly.

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

Also, this rule does not have tribal implications under Executive order

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone for a high speed competition involving personal watercraft on Lake Michigan near Whiting, Indiana. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0195 to read as follows:

**§ 165.T09–0195 Safety Zone; Lake Michigan, Whiting, Indiana.**

(a) *Location.* All waters of Lake Michigan near Whiting, Indiana bounded by a line drawn from the shoreline at 41°41.235′ N., 087°29.779′ W., then northeast to 41°41.494′ N., 087°29.559′ W., then south to 41°40.891′ N., 087°28.486′ W., then southwest to the shoreline at 41°40.725′ N., 087°28.633′ W., then along the shoreline back to the point of origin at 41°41.235′ N., 087°29.779′ W. (NAD 83).

*(b) Enforcement period.* This rule will be enforced on August 12, 2017 from 7 a.m. to 5 p.m. and August 13, 2017 from 7 a.m. to 5 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: June 29, 2017.

**A.B. Cocanour,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2017–14304 Filed 7–6–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2017–0359]**

**RIN 1625–AA00**

## Safety Zone; Oswego Harborfest 2017 Breakwall and Barge Fireworks Display; Oswego Harbor, Oswego, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Oswego Harbor, Oswego, NY. This safety zone is intended to restrict vessels from a portion of the Oswego Harbor during the Oswego Harborfest 2017 Breakwall and Barge Fireworks Display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display.

**DATES:** This rule is effective from 9:15 p.m. on July 29, 2017 until 10:45 p.m. July 30, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0359 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Michael Collet, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *SectorBuffaloMarineSafety@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details of this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect mariners and vessels from the hazards associated with a maritime fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register** because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels near the event.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Buffalo (COTP) has determined that a maritime fireworks show presents significant risks to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks show is taking place.

## IV. Discussion of the Rule

This rule establishes a safety zone on July 29, 2017, or in the event of inclement weather July 30, 2017, from 9:15 p.m. until 10:45 p.m. The safety zone will encompass all waters of the Oswego Harbor, Oswego, NY contained within a 700-foot radius of position 43°28′06″ N., 076°31′07″ W. along with a 350-foot radius of the breakwall between positions 43°27′54″ N., 076°31′24″ W. then northeast to 43°27′59″ N., 076°31′12″ W. (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that it is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes a safety zone to ensure the safety of spectators or public in the area. It is categorically excluded under section 2.B.2, figure 2–1, paragraph 34(g) of the Instruction, which pertains to establishment of safety zones. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0359 to read as follows:

**§ 165.T09–0359 Safety Zone; Oswego Harborfest 2017 Breakwall and Barge Fireworks; Oswego Harbor, Oswego, NY.**

(a) *Location.* This zone will encompass all waters of the Oswego Harbor, Oswego, NY contained within a 700-foot radius of position 43°28′06″ N., 076°31′07″ W. along with a 350-foot radius of the breakwall between positions 43°27′54″ N., 076°31′24″ W. then northeast to 43°27′59″ N., 076°31′12″ W. (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 9:15 p.m. until 10:45 p.m. on July 29, 2017, or in the event of inclement weather, on July 30, 2017, from 9:15 p.m. until 10:45 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

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

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 26, 2017.

**J.S. Dufresne,**

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

[FR Doc. 2017–14258 Filed 7–6–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2017–0642]**

## Safety Zone; Annual Event in the Captain of the Port Buffalo Zone—Brewerton Fireworks

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone for the Brewerton Fireworks, Oneida Lake, Brewerton, NY. This action is necessary and intended for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

**DATES:** The regulation in 33 CFR 165.939(a)(8) will be enforced on July 3, 2017, with a rain date of July 8, 2017, from 9 p.m. to 10:30 p.m.

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

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone; Annual Event in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939(a)(8) for the following event:

(1) *Brewerton Fireworks, Brewerton, NY;* The safety zone listed in 33 CFR 165.939(a)(8) will be enforced on July 3, 2017, with a rain date of July 8, 2017, from 9 p.m. to 10:30 p.m. within a 420 foot radius of the barge located at position 43°14′18.32″ N., 076°8′1.90″ W. (NAD83).

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

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

Dated: July 3, 2017.

**J.S. Dufresne,**

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

[FR Doc. 2017–14307 Filed 7–3–17; 4:15 pm]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2017–0500]**

**RIN 1625–AA00**

## Safety Zone; Port Huron Blue Water Fest Fireworks, St. Clair River, Port Huron, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 420-foot radius of a portion of the St. Clair River, Port Huron, MI. This zone is necessary to protect spectators and vessels from potential hazards associated with the Port Huron Blue Water Fest Fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit.

**DATES:** This temporary final rule is effective from 10 p.m. on July 20, 2017, through 10:20 p.m. on July 21, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0500 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

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

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

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

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Detroit (COTP) has determined that potential hazard associated with fireworks from 10 p.m. to 10:20 p.m. on July 20, 2017 will be a safety concern to anyone within a 420-foot radius of the launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks are being displayed.

### IV. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. through 10:20 p.m. on July 20, 2017. In the event of inclement weather the regulated area will be enforced from 10 p.m. through 10:20 p.m. on July 21, 2017. The safety zone will encompass all U.S. navigable waters of the St. Clair River, Port Huron, MI, within a 420-foot radius of position 42°58.846′ N., 082°25.201′ W. (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

### V. Regulatory Analyses

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

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.'' This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing

Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the St. Clair River from 10:00 p.m. to 10:20 p.m. on July 20 or July 21, 2017. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

*B. Impact on Small Entities*

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

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than thirty minutes that will prohibit entry within 420-feet of the firework launch site. It is categorically excluded under section 2.B.2, figure 2–1, paragraph 34(g) of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0500 to read as follows:

### § 165.T09–0500 Safety Zone; Port Huron Blue Water Fest Fireworks, St. Clair River, Port Huron, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of the St. Clair River, Port Huron, MI within a 420-foot radius of position 42°58.846′ N., 082°25.201′ W. (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) of this section will be enforced from 10 p.m. through 10:20 p.m. on July 20, 2017. In the event of inclement weather, the regulated area will be enforced from 10 p.m. through 10:20 p.m. on July 21, 2017.

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

(2) The safety zone is closed to all vessel traffic, except as may be

permitted by the Captain of the Port Detroit or his on-scene representative.

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

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

Dated: July 3, 2017.

**J.W. Novak,**

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

[FR Doc. 2017–14303 Filed 7–6–17; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2016–0415; FRL–9962–53–Region 9]**

## Approval of California Air Plan Revisions, Antelope Valley Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Antelope Valley Air Quality Management District (AVAQMD or ''District'') portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) and oxides of nitrogen ($NO_X$) from passenger vehicles. We are approving a local rule that encourages the use of rideshare alternatives as a means of travelling to worksites in the District.

**DATES:** This rule will be effective on August 7, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2016–0415. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Buss, EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

### Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

### I. Proposed Action

On March 10, 2017 at 82 FR 13280, the EPA proposed to approve the following rule into the California SIP.

| Local agency | Rule No. | Rule title | Adopted/ amended/ revised | Submitted |
|---|---|---|---|---|
| AVAQMD | 2200 | Transportation Outreach Program | 01/19/99 | 10/29/99 |

Rule 2200 provides a mechanism for obtaining documentation of emission reductions resulting from trip reduction programs. According to the District, the rule is expected to help reduce VOC and $NO_X$ emissions by encouraging individuals to select rideshare alternatives rather than drive alone, and by educating employees and the public about the health impacts of motor vehicle pollution. We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.[1]

### II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

[1] Our proposed rule mistakenly identified the adoption date of Antelope Valley Rule 2200 as July 20, 1999. The correct adoption date for the rule is January 19, 1999.

### III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. As we discussed in our proposed action, the rule establishes a framework for documenting emissions reductions from trip reduction programs, but does not require any specific trip reduction programs nor does it contain a good faith estimate of emission reductions. Consequently, it is not appropriate to credit this rule with emission reductions in the SIP.

### IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the AVAQMD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 20, 2017.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(270)(i)(E)(*2*) to read as follows:

**§ 52.220 Identification of plan-in part.**

* * * * *

(c) * * *

(270) * * *

(i) * * *

(E) * * *

(*2*) Rule 2220, ''Transportation Outreach Program,'' adopted on January 19, 1999.

* * * * *

[FR Doc. 2017–14203 Filed 7–6–17; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2017–0081; FRL–9964–49–Region 5]**

### Air Plan Approval; Wisconsin; Site-Specific Sulfur Dioxide Requirements for USG Interiors, LLC

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), a State Implementation Plan (SIP) revision submitted by Wisconsin on January 31, 2017, and supplemented on March 20, 2017. This SIP submittal consists of Wisconsin Administrative Order AM–16–01, which imposes a requirement for a taller cupola exhaust stack, a sulfur dioxide ($SO_2$) emission limit in conjunction with a minimum cupola stack flue gas flow rate, and associated requirements on the mineral wool production process at the USG Interiors LLC facility located in Walworth, Wisconsin (USG-Walworth). Wisconsin submitted this SIP revision to enable the area near USG-Walworth to qualify for being designated ''attainment'' of the 2010 primary $SO_2$ National Ambient Air Quality Standards (NAAQS), a matter that will be addressed in a separate future rulemaking. EPA is approving AM–16–01 into the Wisconsin SIP, which makes the AM–16–01 requirements federally enforceable.

**DATES:** This direct final rule will be effective September 5, 2017, unless EPA receives adverse comments by August 7, 2017. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0081 at *http://www.regulations.gov,* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886–6832, *Liljegren.Jennifer@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Why did Wisconsin issue Administrative Order AM–16–01?
II. What is EPA's analysis of the $SO_2$ emission limit and associated requirements in AM–16–01?
III. By which Criteria is EPA reviewing this SIP revision?
IV. What action is EPA taking?
V. Incorporation by reference
VI. Statutory and Executive Order reviews

## I. Why Did Wisconsin issue Administrative Order AM–16–01?

Wisconsin submitted a SIP revision on January 31, 2017, along with supplemental information on March 20, 2017. The submittal contains Wisconsin Administrative Order AM–16–01 signed on January 31, 2017, by the Director of the Air Management Bureau of the Wisconsin Department of Natural Resources, which establishes a requirement for a taller cupola stack, an $SO_2$ emission limit, and associated requirements for the mineral wool production process at USG-Walworth. Wisconsin established these requirements to enable the area near [1] USG-Walworth to qualify in the future for being designated ''attainment'' of the 2010 primary $SO_2$ NAAQS.[2]

USG-Walworth cannot demonstrate modeled attainment of the 2010 $SO_2$ NAAQS in accordance with EPA's *Draft* $SO_2$ *NAAQS Designations Modeling Technical Assistance Document*[3] in absence of new requirements pertaining to the mineral wool production process. Therefore, Wisconsin conducted air dispersion modeling using the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) version 16216 (released on December 20, 2016) and 16216r (released on January 17, 2017) in accordance with appendix W of part 51 of chapter 40 of the Code of Federal Regulations (CFR) to determine a new set of requirements, including an increase in the cupola stack height from 68.5 feet to 175 feet above ground and an $SO_2$ emission limit for the mineral wool production process at USG-Walworth in conjunction with a minimum cupola stack flue gas flow rate. The air quality modeling of these conditions supports Wisconsin's conclusion that these limits provide for attainment of the 2010 $SO_2$ NAAQS.

The purpose of this rulemaking is to take action on Wisconsin's request to approve AM–16–01 into the Wisconsin SIP and thereby make federally enforceable the requirement for the taller stack, the $SO_2$ emission limit, and the associated requirements therein. Once these requirements have become federally enforceable, Wisconsin intends to use them to demonstrate AERMOD-modeled attainment for the 2010 $SO_2$ NAAQS for the area near USG-Walworth. EPA intends to designate the area near USG-Walworth for the 2010 $SO_2$ NAAQS, under a separate future rulemaking to be finalized by December 31, 2017.[4]

## II. What is EPA's analysis of the $SO_2$ emission limit and associated requirements in AM–16–01?

Wisconsin issued AM–16–01 on January 31, 2017, for USG-Walworth, with a compliance date of October 1, 2017. This order established a cupola stack height increase from 68.5 feet to 175 feet above ground level, a cupola stack flue gas flow rate of 23,200 actual cubic feet per minute (ACFM) in conjunction with an $SO_2$ emission limit of 301.3 pounds per hour (lbs/hr), and other associated requirements for the mineral wool production process at USG-Walworth.

Dispersion techniques, such as increasing the final exhaust plume rise by manipulation of source parameters like increasing stack heights and flue gas flow rates, are not approvable in most circumstances. EPA's stack height provisions codified at 40 CFR 51.118 arise out of CAA section 123(a), which states that the degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this subchapter shall not be affected in any manner by so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or any other dispersion technique.

''Dispersion technique,'' as defined at 40 CFR 51.100(hh)(1), means any technique which attempts to affect the concentration of a pollutant in the ambient air by: Using that portion of a stack which exceeds good engineering practice stack height; varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

In the case of USG-Walworth, the raising of the stack to 175 feet does not exceed good engineering practice stack height as defined at § 51.100(ii), and AM–16–01 does not provide for the allowable rate of emissions to vary according to atmospheric conditions or ambient pollutant concentrations as per § 51.100(hh)(1)(ii). In some cases, increasing the final exhaust plume rise by manipulation of the stack height and flue gas flow rate is a dispersion technique as per § 51.100(hh)(1)(iii). However, there is an exception under 40 CFR 51.100(hh)(2)(v) where dispersion

[1] The specific area will be identified in a future designations rulemaking to be finalized December 31, 2017, for the 2010 $SO_2$ NAAQS.

[2] On June 3, 2010, EPA revised the primary (health based) $SO_2$ NAAQS by establishing a new one-hour standard at a level of 75 parts per billion (ppb) which is attained when the three-year average of the 99th percentile of one-hour daily maximum concentrations does not exceed 75 ppb (75 FR 35520 and 40 CFR 50.17). EPA determined this is the level necessary to protect public health with an adequate margin of safety, especially for children, the elderly, and those with asthma. These groups are particularly susceptible to the health effects associated with breathing $SO_2$.

[3] *Draft* $SO_2$ *NAAQS Designations Modeling Technical Assistance Document.* December 2013. http://www3.epa.gov/airquality/sulfurdioxide/pdfs/$SO_2$ModelingTAD.pdf

[4] The EPA has issued designations for a total of 94 areas throughout the U.S. for the 2010 $SO_2$ NAAQS in previous final actions signed by the EPA Administrator in ''Round 1'' on August 5, 2013 (78 FR 47191) and in ''Round 2'' on July 12, 2016 (81 FR 45039) and December 13, 2016 (81 FR 89870). The EPA is under a December 31, 2017, deadline to designate additional areas as required by the U.S. District Court for the Northern District of California [Sierra Club v. McCarthy, No. 3–13–cv–3953 (SI) (N.D. Cal. Mar. 2, 2015)]. We are referring to the set of designations being finalized by the December 31, 2017, deadline as ''Round 3'' of the designations process for the 2010 $SO_2$ NAAQS. EPA intends to address the area near USG-Walworth as part of the Round 3 designations.

techniques under § 51.100(hh)(1)(iii) do not include techniques that increase the final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year. Such an increase of plume rise is not considered a dispersion technique when the resulting allowable emissions of $SO_2$ from the facility do not exceed 5,000 tons per year (TPY). The AM–16–01 $SO_2$ emission limit of 301.3 lbs/hr is equivalent to 1,319.69 TPY, which accounts for over 99% of the allowable $SO_2$ emitted by all emission units at USG-Walworth. Additionally, AM–16–01 includes a requirement that USG-Walworth only fire natural gas in the other emission units at the facility, including the boiler (B10), the acoustical tile dryer (P32), and the finishing/curing ovens (P34A and P38A). Therefore, the facility-wide allowable $SO_2$ emissions from USG-Walworth resulting from the AM–16–01 requirement to increase the cupola stack height from 68.5 feet to 175 feet above ground level do not exceed 5,000 TPY. Therefore, EPA proposes to approve the increase in the cupola stack height.

Wisconsin set an $SO_2$ emission limit of 301.3 lbs/hr for the mineral wool production process in conjunction with a cupola stack flue gas flow rate of 23,200 ACFM. For emission rates less than 301.3 lbs/hr, Wisconsin established a required minimum cupola stack flue gas flow rate which varies based on the $SO_2$ emission rate. AM–16–01 requires that the cupola stack flue gas flow rate in ACFM shall be equal to or greater than the flow rate calculated according to Equation 1.

*Equation 1:* Required Flue Gas Flow Rate (ACFM) = [$SO_2$ Emission Rate (lbs/hr) × 79.192] − 664.62

To develop Equation 1, Wisconsin plotted the worst case (highest) $SO_2$ emissions versus worst case (lowest) flue gas flow rates as estimated from information contained in 2015 and 2010 stack testing reports and an August 2014–August 2016 dataset provided by USG-Walworth. Wisconsin fit a trend line (Equation 1) to the plot and included this equation in AM–16–01 as the minimum flue gas flow rate requirement for USG-Walworth (*e.g.* for a given $SO_2$ emission rate less than 301.3 lbs/hr, USG-Walworth must use Equation 1 to determine the corresponding required minimum flue gas flow rate under which it must operate). When emissions are the full allowable 301.3 lbs/hr, the minimum flow rate is 23,200 ACFM; lower minimum flow rates apply at lower emission levels.

Wisconsin's AM–16–01 method of determining compliance with the minimum flue gas flow rate (EPA Method 2) is to be conducted on the same schedule, described below, as that for compliance with the $SO_2$ emission limit (EPA Method 6C). AM–16–01 also requires operation of the thermal oxidizer and baghouse whenever the cupola is in operation/fired and additional requirements for monitoring and maintaining these control devices to ensure they are functioning properly, including an interlock system which only allows operation of the cupola if the thermal oxidizer incinerator chamber temperature is at or above 1,300 degrees Fahrenheit averaged over any one-hour period.

In addition to the 1-hour limit of 301.3 lbs/hour in AM–16–01, Wisconsin opted to set a 30-day rolling average limit of 238.0 lbs/hour. EPA's April 2014 ''Guidance for 1-Hour $SO_2$ Nonattainment Area SIP Submissions'' discusses the option to establish limits with averaging times up to 30 days in length, recommends that any such limit be established at a level that is comparably stringent to the one-hour average limit, and recommends a detailed procedure for determining such a comparably stringent limit. Wisconsin followed the recommendations of the 2014 guidance in determining an appropriate level for this limit. Therefore, the state has applied an appropriate adjustment, yielding a 30-day rolling average emission limit that has comparable stringency to the one-hour average limit. Wisconsin used an adjustment factor of 0.79, which EPA identified in its 2014 guidance as an appropriate adjustment factor for determining equivalent emission limitation between 1-hour and 30-day rolling average timeframes for uncontrolled coal-fired boilers based on a national analysis of utility coal boiler emissions.

Wisconsin's method of determining compliance with the 301.3 lbs/hr limit as set forth in AM–16–01 uses EPA-approved stack testing methods, and includes an initial stack test that must be conducted no later than April 1, 2018, which is 180 days after the AM–16–01 compliance date of October 1, 2017, and periodic stack testing conducted every five years within 90 days of the anniversary date of the initial stack test. Wisconsin's method of determining continuous compliance, as set forth in AM–16–01, requires a mass balance calculation to demonstrate compliance with the 238.0 lbs/hr limit on a 30-day rolling average basis. Under this rule, stack tests at the facility must show compliance with the 1-hour emission limit of 301.3 lbs/hr, but continuous emissions data, collected from routine mass balance calculations, are used to assess compliance with the 30-day average emission limit of 238.0 lbs/hr. Wisconsin has thereby established a two-tiered enforcement regime, in which stack tests provide occasional assessment of compliance, tested against a 1-hour limit, and continuous emissions data, as collected via routine mass balance calculations, provide a continuous assessment of compliance, tested against a 30-day average limit.

Wisconsin's mass balance equation in AM–16–01 is the difference between the sum of the estimated sulfur content of all the materials loaded into the cupola and the sum of the estimated sulfur content in the mineral wool product output from the cupola in lbs/day divided by the operating hours per day and multiplied by the molecular weight ratio of $SO_2$ to sulfur. AM–16–01 requires USG-Walworth to develop a compliance and monitoring plan and to monitor, record, and report the information necessary for calculating the 30-day rolling average $SO_2$ emission limit via the mass balance equation, such as operating hours, operating days, coke and all other material usage amounts. AM–16–01 includes requirements to sample the sulfur, moisture, and heat content of each of the materials input to the cupola and the sulfur content of the mineral wool product or waste material output from the cupola. The sampling requirements include initial material sampling, ongoing material sampling, ongoing low sulfur material sampling, mineral wool product and waste sampling, alternate sampling frequency which increases if the 30-day rolling average $SO_2$ emission rate is equal to or greater than 95% of the limit for three or more operating days during the previous 12 calendar months. Likewise, sampling frequency can be decreased if the 30-day rolling average $SO_2$ emission rate is equal to or less than 70% of the limit for 12 consecutive months. The sampling requirements include sample collection and preparation methods as per those of ASTM International, formerly the American Society for Testing and Materials (ASTM). Finally, AM–16–01 includes a requirement for USG-Walworth to submit a revision request to incorporate the applicable requirements of AM–16–01 into the USG-Walworth operating permit by June 23, 2019.

**III. By which criteria is EPA reviewing this SIP revision?**

EPA is evaluating AM–16–01 on the basis of whether its requirements are measurable (and thus enforceable) and whether it strengthens Wisconsin's SIP. When imposing quantitative requirements such as emission limits, it is important that these requirements be measurable so as to determine compliance. While the use of an electronic continuous emissions monitoring system (CEMS) would be an ideal way to measure the $SO_2$ emission rate from the mineral wool production process and the flue gas flow rate from the cupola stack for compliance determination purposes, EPA's analysis, above, of Wisconsin's AM–16–01 compliance requirements shows that Wisconsin has developed a conservative mass balance approach that allows for the ongoing measurement of the USG-Walworth mineral wool production process $SO_2$ emission rate to determine compliance with the $SO_2$ emission limit contained in AM–16–01. The AM–16–01 requirements are carefully designed such that compliance with the $SO_2$ emission limit can be determined via a combination of testing, sampling, monitoring, recordkeeping, and reporting making the $SO_2$ emission limit and associated requirements contained in AM–16–01 measureable and enforceable. Therefore, in the absence of a CEMS, EPA finds acceptable the AM–16–01 mass balance approach of compliance monitoring in conjunction with required periodic stack testing.

The USG-Walworth mineral wool production process is already subject to Wisconsin rule NR 417.07(2)(b), which is a statewide $SO_2$ emission limit of 5.5 pounds per Million British Thermal Units (lbs/MMBTU) that applies to any steam generating unit or other fuel-burning equipment firing solid fossil fuel at a facility that has a total heat input capacity on solid fossil fuel of less than 250 MMBTU/hr and which was incorporated into the Wisconsin SIP in 1993 (58 FR 29537). This SIP requirement will not be removed with the approval of AM–16–01 into the Wisconsin SIP. AM–16–01 provides additional requirements to the 5.5 lbs/MMBTU emission limit already in the Wisconsin SIP. Therefore, EPA's approval of AM–16–01 would strengthen the Wisconsin SIP. Since the current $SO_2$ emission limit of 5.5 lbs/MMBTU will remain in the SIP (58 FR 29537), EPA's approval of AM–16–01 into the Wisconsin SIP would not cause there to be any relaxation of the $SO_2$ emission limit in the Wisconsin SIP with respect to USG-Walworth and would, therefore, not interfere with CAA section 110(l), which is the anti-backsliding provision of the CAA. Therefore, EPA is approving AM–16–01 into the Wisconsin SIP.

As previously stated, EPA intends to designate the area near USG-Walworth for the 2010 $SO_2$ NAAQS under a separate future rulemaking to be finalized by December 31, 2017. If AM–16–01 becomes SIP-approved and thereby federally enforceable in a timely fashion, EPA will formally evaluate the adequacy of the AM–16–01 requirements to provide for attainment as part of the rulemaking on the 2010 $SO_2$ NAAQS designation for the area near USG-Walworth.

**IV. What action is EPA taking?**

EPA is approving into the Wisconsin SIP AM–16–01, which contains a requirement for a taller cupola stack, an $SO_2$ emission limit, and associated requirements for the mineral wool production process at USG-Walworth. EPA confirms that the requirements contained in AM–16–01 are measureable, enforceable, and strengthen the Wisconsin SIP. By approving AM–16–01 into the Wisconsin SIP, the stack height requirement, the $SO_2$ emission limit, and the associated requirements will become Federally enforceable.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective September 5, 2017 without further notice unless we receive relevant adverse written comments by August 7, 2017. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective September 5, 2017.

**V. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

**VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 20, 2017.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.2570 is amended by adding paragraph (c)(136) to read as follows:

**§ 52.2570 Identification of plan.**

* * * * *

(c) * * *

(136) On January 31, 2017 (supplemented on March 20, 2017), the Wisconsin Department of Natural Resources submitted a request to incorporate Wisconsin Administrative Order AM–16–01 into its State Implementation Plan. AM–16–01 imposes a requirement for a taller cupola exhaust stack, a sulfur dioxide ($SO_2$) emission limit in conjunction with a minimum cupola stack flue gas flow rate, and associated requirements on the mineral wool production process at the USG Interiors LLC facility located in Walworth, Wisconsin (USG-Walworth). Wisconsin intends to use the requirements of AM–16–01 to support an attainment designation.

(i) *Incorporation by reference.* Wisconsin Administrative Order AM–16–01, issued by the Wisconsin Department of Natural Resources on January 31, 2017, to USG Interiors LLC for its facility located in Walworth, Wisconsin.

[FR Doc. 2017–14212 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0136; FRL–9964–56–Region 4]**

## Air Plan Approval; TN: Non-Interference Demonstration for Federal Low-Reid Vapor Pressure Requirement in Shelby County

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a noninterference demonstration that evaluates whether the change for the Federal Reid Vapor Pressure (RVP) requirements in Shelby County (hereinafter referred to as the ''Area'') would interfere with the Area's ability to meet the requirements of the Clean Air Act (CAA or Act). Tennessee submitted through the Tennessee Department of Environment and Conservation (TDEC), on April 12, 2017, a noninterference demonstration on behalf of the Shelby County Health Department requesting that EPA change the RVP requirements for Shelby County. Specifically, Tennessee's noninterference demonstration concludes that relaxing the federal RVP requirement from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline sold between June 1 and September 15 of each year in Shelby County would not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS or standards) or with any other CAA requirement.

**DATES:** This rule is effective July 7, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2017–0136. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached via telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. What is the background for this final action?

On April 12, 2017, Tennessee submitted a request that EPA relax the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold between June 1 and September 15 of each year (*i.e.,* during high ozone season) in Shelby County. As part of that request, Tennessee evaluated whether removal of this requirement would interfere with air quality in Shelby County. To make this demonstration of noninterference, Tennessee completed a technical analysis, including modeling, to estimate the change in emissions that would result from a switch to 9.0 psi RVP fuel in Shelby County. In a notice of proposed rulemaking (NPR) published on May 11, 2017 (82 FR 21966), EPA proposed to approve the State's noninterference demonstration. The details of Tennessee's submittal and the rationale for EPA's actions are explained in the NPR. EPA did not receive any adverse comments on the proposed action.

## II. Final Action

EPA is approving Tennessee's April 12, 2017, noninterference demonstration supporting the State's request to relax the RVP standard to 9.0 psi in Shelby County. EPA has determined that the change in the RVP requirements for Shelby County will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA.

EPA has determined that Tennessee's April 12, 2017, RVP-related SIP revision is consistent with the applicable provisions of the CAA for the reasons provided in the NPR. Through this action, EPA is not removing the federal 7.8 psi RVP requirement for Shelby County. Any such action would occur in a separate rulemaking.

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary because today's action approves a noninterference demonstration that will serve as the basis of a subsequent action to relieve the Area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule will serve as a basis for a subsequent action to relieve the Area from certain CAA requirements. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

## III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR part 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 22, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart RR—Tennessee

■ 2. In § 52.2220, the table in paragraph (e) is amended by adding the entry ''Non-interference Demonstration for Federal Low-Reid Vapor Pressure Requirement in Shelby County'' at the end of the table to read as follows:

**§ 52.2220 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

| Name of non-regulatory SIP provision | Applicable geographic or nonattainment area | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * * | * | * * | * |
| Non-interference Demonstration for Federal Low-Reid Vapor Pressure Requirement in Shelby County. | Shelby County ..... | 4/12/2016 | 7/7/2017 [Insert **Federal Register** citation]. | |

[FR Doc. 2017–14202 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2016–0561; FRL–9964–58–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Volatile Organic Compound Reasonably Available Control Technology for 1997 Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Pennsylvania state implementation plan (SIP). This SIP revision pertains to the requirements for reasonably available control technology (RACT) controls for certain sources of volatile organic compounds (VOCs) under the 1997 ozone national ambient air quality standard (NAAQS). This SIP revision includes Pennsylvania's certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 1997 ozone NAAQS and a negative declaration that certain categories of sources do not exist in Pennsylvania. This SIP revision does not address Pennsylvania's May 2016 VOC and nitrogen oxides ($NO_X$) RACT rule, ''Additional RACT Requirements for Major Sources of $NO_X$ and VOCs,'' also known as RACT II. EPA will take separate action on RACT II. EPA is approving these revisions addressing VOC RACT for the 1997 ozone NAAQS in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on October 5, 2017 without further notice, unless EPA receives adverse written comment by August 7, 2017. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0561 at *https://www.regulations.gov,* or via email to *stahl.cynthia@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Maria A Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On September 25, 2006, the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP that addresses certain requirements of RACT under the 1997 ozone NAAQS. The SIP revision was entitled, ''Pennsylvania Department of Environmental Protection Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Revision Under the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS),'' September 2006, and will be referred to in this rulemaking action as ''the 2006 RACT SIP.'' On June 27, 2016, PADEP withdrew from EPA review portions of the 2006 RACT SIP revision related to RACT for major stationary sources of VOC and $NO_X$. EPA has included in the docket a redacted version of the 2006 RACT SIP to identify which portions of this document remain before EPA and are the subject of this notice of proposed rulemaking. Pennsylvania addressed the

remaining RACT requirements for the 1997 ozone NAAQS (which Pennsylvania withdrew from the 2006 RACT SIP) in a subsequent SIP revision submittal, which will be the subject of a separate rulemaking action.

## I. Background

Ozone is formed in the atmosphere by photochemical reactions between VOCs, $NO_X$, and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply control on VOC and $NO_X$ emission sources to achieve emission reductions. Among effective control measures, RACT controls significantly reduce VOC and $NO_X$ emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761 at 53762, September 17, 1979). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. Pennsylvania previously corrected its deficiencies under the 1-hour ozone standard and has no further deficiencies to correct under this section of the CAA. The second requirement, set forth in section 182(b)(2) of the CAA, applies to moderate (or worse) ozone nonattainment area as well as to marginal and attainment areas in ozone transport regions (OTRs) established pursuant to section 184 of the CAA, and requires these areas to implement RACT controls on all major VOC and $NO_X$ emission sources and on all sources and source categories covered by a control technique guideline (CTG) issued by EPA.[1] *See* CAA section 182(b)(2) and 184(b). Alternatively, if a state has no sources in a particular source category covered by an EPA CTG, the state may submit a negative declaration in a SIP submittal asserting no subject sources are within the state.

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a preexisting respiratory disease, such as asthma. EPA subsequently revised the ozone NAAQS in 2008 and again in 2015. This rulemaking only addresses SIP requirements under the 1997 ozone NAAQS.

The entire Commonwealth of Pennsylvania is in the OTR. Therefore, under CAA section 184, the entire Commonwealth was subject to RACT requirements under the 1-hour ozone standard. Pennsylvania has implemented numerous RACT controls to meet the CAA RACT requirements under the 1-hour and 1997 8-hour ozone NAAQS. These RACT controls were promulgated in title 25 of the Pennsylvania Code, chapter 129, Standards for Sources.

EPA requires under the 1997 ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 1997 ozone NAAQS attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. This information may supplement existing RACT guidance documents that were developed for the 1-hour standard, such that the State's SIP accurately reflects RACT for the 8-hour ozone standard based on the current availability of technically and economically feasible controls. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Pursuant to section 184(b)(1)(B) of the CAA, Pennsylvania had the obligation for the 1997 ozone NAAQS to implement RACT with respect to sources of VOCs in the Commonwealth covered by a CTG issued before or after November 15, 1990 (but before September 15, 2006 when SIP requirements were due for the 1997 ozone NAAQS). Another 1997 ozone NAAQS requirement for RACT is to submit a negative declaration that there are no CTG or non-CTG major sources of VOC and $NO_X$ emissions within the Commonwealth of Pennsylvania. The RACT requirements for the 1997 ozone NAAQS were due to EPA as SIP revisions by September 15, 2006. As stated above, PADEP submitted its 2006 RACT SIP on September 25, 2006 to address RACT requirements for certain VOC sources and for CTG sources.

## II. Summary of SIP Revision

Pennsylvania's 2006 RACT SIP revision satisfies certain RACT requirements for the 1997 ozone NAAQS through certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 1997 ozone NAAQS and negative declarations that certain CTG source categories do not exist in Pennsylvania.

### CTG Source Categories

Table 1 lists the CTG source categories due which were required to have RACT rules under the 1997 ozone NAAQS as these CTGs were issued by EPA prior to the due date for SIP requirements for this NAAQS (*i.e.,* September 15, 2006). Table 1 also shows the regulations which PADEP has adopted for those source categories, their state effective dates, and the date and **Federal Register** (FR) citation of EPA's approval of each regulation. In addition, Table 1 shows the source categories for which Pennsylvania has submitted negative declarations as none of these sources existed in the Commonwealth for those specific categories. In its 2006 RACT SIP, PADEP has certified that these rules constitute RACT for the 1997 ozone NAAQS.

[1] CTGs are documents issued by EPA intended to provide state and local air pollution control authorities information to assist them in determining RACT for VOC from various sources. The recommendations in the CTG are based upon available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process. Pursuant to section 184(b)(1)(B) of the CAA, all areas in the OTR must implement RACT with respect to sources of VOCs in the state covered by a CTG issued before or after November 15, 1990.

TABLE 1— PENNSYLVANIA RACT RULES FOR CTG VOC SOURCE CATEGORIES

| CTG VOC source category | Pennsylvania rule (25 Pa. Code) | State effective date | EPA Approval date & FR citation |
|---|---|---|---|
| Aerospace | Section 129.73 Aerospace manufacturing and rework. | 4/10/99 | 6/25/01, 66 FR 33645. |
| Bulk Gasoline Plants | Section 129.60 Bulk gasoline plants | 8/3/91 | 5/13/93, 58 FR 28362. |
| Equipment Leaks from Natural Gas/Gasoline Processing Plants. | Negative Declaration. | | |
| Factory Surface Coating of Flat Wood Paneling | Negative Declaration. | | |
| Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment. | Section 129.71 Synthetic organic chemical and polymer manufacturing—fugitive sources. | 5/23/92 | 12/22/94, 59 FR 65971. |
| Graphic Arts—Rotogravure and Flexography | Section 129.67 Graphic arts systems | 8/3/91<br>9/5/1998<br>6/28/2014 | 5/13/93, 58 FR 28362.<br>7/26/2000, 65 FR 45918.<br>6/25/2015, 80 FR 36481. |
| Large Petroleum Dry Cleaners | Negative declaration. | | |
| Leaks from Gasoline Tank Trucks and Vapor Collection Systems. | Section 129.62 General standards for bulk gasoline terminals, bulk gasoline plants, and small gasoline storage tanks. | 5/23/94 | 12/22/94, 59 FR 65971. |
| Leaks from Petroleum Refinery Equipment | Section 129.58 Petroleum refineries—fugitive sources. | 8/13/83 | 7/27/84, 49 FR 30183. |
| Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins. | Section 129.71 Synthetic organic chemical and polymer manufacturing—fugitive sources. | 5/23/92 | 12/22/94, 59 FR 65971. |
| Manufacture of Pneumatic Rubber Tires | Section 129.69 Manufacture of pneumatic rubber tires. | 5/23/92 | 12/22/94, 59 FR 65971. |
| Manufacture of Synthesized Pharmaceutical Products. | Section 129.68 Manufacture of synthesized pharmaceutical products. | 8/3/91 | 5/13/93, 58 FR 28362.<br>8/11/92, 57 FR 3577. |
| Petroleum Liquid Storage in External Floating Roof Tanks. | Section 129.56 Storage tanks greater than 40,000 gallons capacity containing VOCs. | 9/5/98 | 7/26/00, 65 FR 45920. |
| Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds. | Section 129.55 Petroleum refineries—specific sources. | 6/20/81 | 1/19/83, 48 FR 2319. |
| SOCMI Air Oxidation Processes | Negative declaration. | | |
| SOCMI Distillation and Reactor Processes | Negative declaration. | | |
| Shipbuilding/repair | Negative declaration. | | |
| Solvent Metal Cleaning | Section 129.63 Degreasing operations | 12/22/01 | 1/16/03, 68 FR 2208. |
| Stage I Vapor Control Systems—Gasoline Service Stations. | Section 129.61 Small gasoline storage tank control (Stage I control). | 8/3/91 | 5/13/93, 58 FR 28362. |
| Storage of Petroleum Liquids in Fixed Roof Tanks. | Section 129.56 Storage tanks greater than 40,000 gallons capacity containing VOCs. | 9/5/98 | 7/26/00, 65 FR 45920. |
| • Surface Coating for Insulation of Magnet Wire<br>• Surface Coating of Automobiles and Light-Duty Trucks.<br>• Surface Coating of Cans.<br>• Surface Coating of Coils.<br>• Surface Coating of Fabrics.<br>• Surface Coating of Large Appliances.<br>• Surface Coating of Metal Furniture.<br>• Surface Coating of Miscellaneous Metal Parts and Products.<br>• Surface Coating of Paper. | Section 129.52 Surface coating processes | 6/10/2000<br>11/20/10 | 7/20/01, 66 FR 37908.<br>8/24/2011, 76 FR 52870. |
| Tank Truck Gasoline Loading Terminals | Section 129.59 Bulk gasoline terminals | 8/3/91 | 5/13/93, 58 FR 28362. |
| Use of Cutback Asphalt | Section 129.64 Cutback asphalt paving | 8/13/83 | 7/27/84, 49 FR 30183. |
| Wood Furniture | Sections 129.101–107 Wood Furniture Manufacturing Operations. | 6/10/00 | 7/20/01, 66 FR 37908. |

Non-CTG VOC Source Categories

In its 2006 RACT SIP, PADEP has also certified that three regulations constitute RACT for certain VOC sources for the 1997 ozone NAAQS based on the currently available technically and economically feasible controls. Table 2 lists these source categories, their state effective dates, and the date and FR citation of EPA's approval of each regulation.

TABLE 2—PENNSYLVANIA RACT RULES FOR NON-CTG VOC SOURCES

| Pennsylvania non-CTG VOC rule (25 Pa. Code) | State effective date | EPA approval date & FR citation |
|---|---|---|
| Section 129.65 Ethylene production plants | 8/1/79 | 5/20/80, 45 FR 33607. |
| Section 129.72 Manufacture of surface active agents | 5/23/92 | 12/22/94, 59 FR 65971. |
| Section 129.75 Mobile equipment repair and refinishing | 11/27/99 | 8/14/00, 65 FR 49501. |
| Section 129.51 Sources of VOC, General | 4/10/1999 | 6/25/2001, 66 FR 33645. |
| (This section lists general requirements for all sources of VOCs, and does not include RACT controls.). | 6/28/2014 | 6/25/2015, 80 FR 36482. |

## III. Final Action

EPA's review of this material indicates that Pennsylvania's 2006 RACT SIP meets certain RACT requirements for the 1997 ozone NAAQS for applicable CTG source categories and for three non-CTG VOC categories: manufacture of surface active agents, mobile equipment repair and refinishing, and ethylene production plants to address sections 182(b) and 184(b) of the CAA.

EPA is approving Pennsylvania's 2006 RACT SIP, which was submitted on September 25, 2006. This SIP revision consists of (1) Pennsylvania's certification that previously adopted and SIP approved RACT controls for CTG source categories and three non-CTG source categories are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes and (2) negative declaration that there are no sources in the Commonwealth of Pennsylvania for five CTG source categories. EPA finds this 2006 RACT SIP meets requirements for RACT in CAA section 182(b) and 184(b) with respect to these CTG categories, to the negative declarations, and to these specific VOC source categories. Pennsylvania has addressed its remaining obligations to address major stationary source RACT for VOC and $NO_X$ sources in a subsequent SIP submittal for which EPA will take later, separate rulemaking action.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *October 5, 2017* without further notice unless EPA receives adverse comment by *August 7, 2017.* If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action approving Pennsylvania's 2006 RACT SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 22, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for ''Reasonably Available Control Technology (RACT) for the 1997 ozone national ambient air quality standard (NAAQS)'' at the end of the table to read as follows:

**52.2020 Identification of plan.**

* * * * *

(e) * * *

(1) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * * | * * | * | * * | * |
| Reasonably Available Control Technology (RACT) for the 1997 ozone national ambient air quality standard (NAAQS). | Statewide ..... | 9/25/2006 | 7/7/2017, **[Insert Federal Register citation]**. | Pertaining only to control technique guideline (CTG) source categories and three non-CTG volatile organic compound (VOC) source categories: Manufacture of surface active agents, mobile equipment repair and refinishing, and ethylene production plants. Remainder of submittal withdrawn 6/27/2016. |

* * * * *

[FR Doc. 2017–14204 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2016–0013; FRL–9962–15]**

### Flonicamid; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of flonicamid in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 7, 2017. Objections and requests for hearings must be received on or before September 5, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0013, 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.*

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, Director, 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).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0013 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 5, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0013, 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 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.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 19, 2016 (81 FR 31581) (FRL–9946–02), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP) 5E8428 submitted by IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requests that 40 CFR 180.613 be amended by establishing tolerances for residues of the fungicide flonicamid, N-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide, and its metabolites, TFNA (4-trifluoromethylinicotinic acid), TFNA–AM (4-trifluoromethylnicotinamide), and TFNG, N-(4-trifluoromethylnicotinoyl)glycine, calculated as the stoichiometric equivalent of flonicamid, in or on pea and bean, dried shelled, except soybean, subgroup 6C at 3.0 parts per million (ppm); Pea and bean, succulent shelled, subgroup 6B at 6.0 ppm; and Vegetable, legume, edible podded, subgroup 6A at 4.0 ppm. This petition contains an additional request to increase the existing tolerance on Vegetable, fruiting, group 8–10 from 0.4 to 1.50 ppm, but EPA has already taken action on that specific request, in a final tolerance rule published in the **Federal Register** on May 11, 2017 (82 FR 21941) (FRL–9959–91).

A summary of the petition prepared by ISK Biosciences Corporation, the registrant, is available in the docket, *http://www.regulations.gov,* at docket #: EPA–HQ–OPP–2016–0013. One comment was received on the notice of filing. EPA's response to the comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing a tolerance for Pea and bean, succulent shelled, subgroup 6B that varies slightly from what the petitioner requested. The reason for this change is explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for flonicamid including exposure resulting from the tolerances established by this action, consistent with FFDCA section 408(b)(2).

In the **Federal Register** of May 11, 2017 (82 FR 21941) (FRL–9959–91), EPA established tolerances for residues of flonicamid in or on several commodities. The risk assessments supporting that action aggregated dietary and non-occupational exposures from existing and proposed uses of flonicamid, including from the exposures associated with the tolerances requested in this action. That assessment, which included the tolerances in today's action, concluded that the tolerances are safe; therefore, EPA is relying upon that **Federal Register** document and the risk assessments supporting the findings in that document to support the safety finding for the tolerances that are the subject of this action.

Specific information on the studies received and the nature of the adverse effects caused by flonicamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document, ''Subject: Flonicamid. Human Health Risk Assessment for New Uses on Legume Vegetables, Subgroups 6A, 6B, and 6C; Add Directions for use on Greenhouse Grown Peppers and Increase the Tolerance for Residues on Fruiting Vegetables, Group 8–10; New Use on Citrus Fruits, Group 10–10; and a Tolerance without U.S. Registration for residues in/on Dried Tea'' in docket ID number, EPA–HQ–OPP–2016–0013.

Based on the findings of the May 11, 2017 **Federal Register** document and the supporting documents, EPA concludes that there is a reasonable

certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flonicamid residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (FMC Method No. P–3561M, a liquid chromatography with tandem mass spectrometry (LC/MS/MS) method) is available to enforce the tolerance expression for flonicamid and its metabolites in or on plant commodities.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for flonicamid.

### *C. Response to Comments*

*Comment:* One anonymous comment on the notice of filing of petition 5E8428 was received. The commenter claims that flonicamid is a ''toxic pesticide'' and residues at any level in food commodities should not be allowed and requested that EPA deny setting tolerances for the petition-for new uses of flonicamid. The comment stated that the proposed flonicamid use would add to about 25,000 toxic chemicals currently in the environment and combine to create even more toxic chemical residues in food and drinking water further increasing harmful effects to humans and environment.

*Agency response:* The Agency recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by FFDCA section 408, EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. In this instance, EPA has examined all the relevant and available data and concluded that the tolerances are safe. The commenter has not provided any information to support a conclusion by the Agency that the tolerances are not safe.

### *D. Revisions to Petitioned-For Tolerances*

EPA is establishing a slightly higher tolerance for Pea and bean, succulent shelled, subgroup 6B at 7.0 ppm compared to the petitioner's request of a tolerance at 6.0 ppm. EPA's decision is based on the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures and available field trial data.

## V. Conclusion

Therefore, tolerances are established for residues of flonicamid, N-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide, and its metabolites, TFNA (4-trifluoromethylinicotinic acid), TFNA–AM (4-trifluoromethylnicotinamide), and TFNG, N-(4-trifluoromethylnicotinoyl)glycine, calculated as the stoichiometric equivalent of flonicamid, in or on Pea and bean, succulent shelled, subgroup 6B at 7.0 ppm; Pea and bean, dried shelled, except soybean, subgroup 6C at 3.0 ppm; and Vegetable, legume, edible podded, subgroup 6A at 4.0 ppm.

## VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

## VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2017.

**Michael L. Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.613, add alphabetically the following commodities ''Pea and bean, succulent shelled, subgroup 6B''; ''Pea and bean, dried shelled, except soybean, subgroup 6C''; and ''Vegetable, legume, edible podded, subgroup 6A'' to the table in paragraph (a)(1) to read as follows:

**§ 180.613 Flonicamid; tolerances for residues.**

(a) * * *

(1) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Pea and bean, succulent shelled, subgroup 6B | 7.0 |
| Pea and bean, dried shelled, except soybean, subgroup 6C | 3.0 |
| * * * * * | |
| Vegetable, legume, edible podded, subgroup 6A | 4.0 |
| * * * * * | |

* * * * *

[FR Doc. 2017–14339 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2016–0218; FRL–9962–97]**

## Prosulfuron; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of prosulfuron in or on grain, cereal, forage, fodder, and straw, group 16, stover; grain, cereal, forage, fodder, and straw, group 16, forage; grain, cereal, forage, fodder, and straw, group 16, hay; grain, cereal, forage, fodder, and straw, group 16, straw; and grain, cereal, group 15. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 7, 2017. Objections and requests for hearings must be received on or before September 5, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0218, 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.*

**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).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0218 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 5, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0218, 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 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.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 19, 2016 (81 FR 31581) (FRL–9946–02), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F8455) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.481 be amended by establishing tolerances for residues of the herbicide prosulfuron, (*N*-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]-2-(3,3,3-trifluoropropyl)benzenesulfonamide), in or on grain, cereal, forage, fodder, and straw, group 16, fodder at 0.01 parts per million (ppm); grain, cereal, forage, fodder, and straw, group 16, forage at 0.10 ppm; grain, cereal, forage, fodder, and straw, group 16, hay at 0.20 ppm; grain, cereal, forage, fodder, and straw, group 16, straw at 0.02 ppm; and grain, cereal, group 15 at 0.01 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the commodity definition from grain, cereal, forage, fodder, and straw, group 16, fodder to grain, cereal, forage, fodder, and straw, group 16, stover. The reason for this change is explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for prosulfuron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with prosulfuron follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The most prevalent effect observed across species and study durations following administration of prosulfuron was decreased body weight observed in subchronic and chronic oral toxicity studies in rats and dogs. Additionally, subchronic and chronic oral toxicity studies in dogs showed decreased hematological parameters and hepatic toxicity. Evidence of neurotoxicity was observed in an acute neurotoxicity study but not in the subchronic neurotoxicity study. The neurological effects seen in the acute neurotoxicity study were transient, affecting primary sensorimotor and gait functions. In a developmental range-finding study in rabbits, ataxia, hypoactivity, and neuropathology were observed starting at doses of 150 mg/kg/day. However, these potential signs of neurotoxicity were not consistent with findings in the two main developmental studies in rabbits where there were no signs of neurotoxicity observed up to 200 mg/kg/day. Additionally, other repeated dosing studies in the rat, mouse, and dog did not show evidence of neurotoxicity. There is no evidence that prosulfuron is an immunotoxic chemical. Prosulfuron is classified as ''*Not Likely to Be Carcinogenic to Humans*'' based on the lack of evidence of carcinogenicity in mice and rats and no concern for mutagenicity. Prosulfuron has low acute toxicity by the oral, dermal, and inhalation routes of exposure, it is not considered an eye or skin irritant and it is not a skin sensitizer.

There was no evidence from the developmental and reproductive studies of increased susceptibility in rat or rabbit fetuses. In the first of two rabbit developmental studies, there were no signs of maternal or developmental toxicity. The second rabbit (tested using higher doses than the first) and the rat developmental studies showed dose-related increases in small fetuses and skeletal effects but these occurred at maternally toxic doses. In the reproductive study in rats, decreases in body weights were noted for both the adults of the $P_0$ and $P_1$ generations and for the $F_1$ and $F_2$ pups.

Specific information on the studies received and the nature of the adverse effects caused by prosulfuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Prosulfuron. Human Health Risk Assessment in Support of a Section 3 Petition for the Expansion of Crop Groups 15 and 16 to Include Permanent Tolerances for Residues of Prosulfuron in Rice, pages 9–12 in docket ID number EPA–HQ–OPP–2016–0218.

### *B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-andassessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for prosulfuron used for

human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROSULFURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario | Point of departure and uncertainty/ safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (Females 13–49 years of age) (General population including infants and children). | NOAEL = 10 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x FQPA SF = 1x | Acute RfD = 0.1 mg/kg/day.<br>aPAD = 0.1 mg/kg/day | Acute Neurotoxicity Study—Rat<br>MRID 43387703<br>LOAEL = 250 mg/kg/day based on abnormal gait in females. |
| Chronic dietary (All populations) | NOAEL = 5.3 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.053 mg/kg/day.<br>cPAD = 0.053 mg/kg/day | Subchronic Oral Toxicity Study—Dog<br>MRID 42685230<br>LOAEL = 54 mg/kg/day based on decreased feed efficiency, hematological findings and hepatotoxicity in both sexes. |
| Cancer (Oral, dermal, inhalation). | Prosulfuron is classified as ''*Not Likely to Be Carcinogenic to Humans*'' based on the lack of evidence of carcinogenicity in mice and rats and no concern for mutagenicity. | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to prosulfuron, EPA considered exposure under the petitioned-for tolerances as well as all existing prosulfuron tolerances in 40 CFR 180.481. EPA assessed dietary exposures from prosulfuron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for prosulfuron. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) Nationwide Health and Nutrition Examination Survey, What We Eat In America (NHANES/WWEIA) conducted from 2003–2008. As to residue levels in food, the acute dietary analysis was obtained from the Dietary Exposure Evaluation Model using the Food Commodity Intake Database (DEEM–FCID; version 3.18) and assumed 100 percent crop treated (PCT) and tolerance-level residues.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA NHANES/WWEIA conducted from 2003–2008. As to residue levels in food, the chronic dietary analysis was obtained from the DEEM–FCID; version 3.18 database and assumed 100 PCT and tolerance-level residues.

iii. *Cancer.* EPA has concluded that prosulfuron does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for prosulfuron. Tolerance-level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for prosulfuron in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of prosulfuron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Tier 1 Rice Model and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of prosulfuron for both acute exposures and chronic exposures for non-cancer assessments are estimated to be 37 parts per billion (ppb) for both surface water and ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessment, the water concentration value of 37 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Prosulfuron is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found prosulfuron to share a common mechanism of toxicity with any other substances, and prosulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that prosulfuron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulativeassessment-risk-pesticides.*

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for prosulfuron includes a developmental toxicity study in the rat, two developmental toxicity studies and a range-finding developmental study in the rabbit, and a 2-generation reproduction toxicity study in the rat. There was no evidence of increased susceptibility of fetuses or offspring in any of these studies.

There were no maternal or fetal effects observed at any dose in the first of two rabbit developmental toxicity studies. In the second rabbit study and in the rat developmental toxicity study, a dose-related increase in small fetuses and skeletal effects was observed, but only in the presence of maternal toxicity (decreased body weight gain in the rat study; and increases in abortions, decreases in food consumption and decreased mean body weight gain in the rabbit study).

In the developmental range-finding study in rabbits, ataxia, hypoactivity, and neuropathology were observed starting at doses of 150 mg/kg/day. However, these potential signs of neurotoxicity were not consistent with findings in the two main developmental studies in rabbits where there were no signs of neurotoxicity observed up to 200 mg/kg/day. In the 2-generation reproduction study in the rat, decreases in body weight were observed in the $F_1$ and $F_2$ offspring but these occurred at doses in which parental toxicity was also observed. There was no evidence of neurotoxicity to fetuses or offspring observed in any of the developmental or reproduction toxicity studies.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the Food Quality Protection Act Safety Factor (FQPA SF) were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for prosulfuron is complete.

ii. Although there was evidence of neurotoxicity in the acute neurotoxicity study and the range-finding developmental toxicity rabbit study, the selected endpoints are protective of these effects since they were seen at dose levels in excess of those where systemic toxicity occurred and at doses at least 15–fold higher than the no-observed adverse effect levels (NOAELs) selected for risk assessment. Concern is also low since no neurotoxicity was observed in the rest of the prosulfuron toxicological database, including the subchronic neurotoxicity study in rats.

iii. As discussed in Unit III.D.2., there is no evidence that prosulfuron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to prosulfuron in drinking water. These assessments will not underestimate the exposure and risks posed by prosulfuron.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to prosulfuron will occupy 6.4% of the aPAD for all infants (< 1 years old), the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to prosulfuron from food and water will utilize 3.9% of the cPAD for all infants (< 1 years old), the population group receiving the greatest exposure. There are no residential uses for prosulfuron.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short-term adverse effect was identified; however, prosulfuron is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for prosulfuron.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, prosulfuron is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for prosulfuron.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, prosulfuron is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to prosulfuron residues.

## IV. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology, Method AG–590C (a high performance liquid chromatography method with column switching and ultraviolet (UV) detection), is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

### B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for prosulfuron.

### C. Revisions to Petitioned-For Tolerances

EPA has revised the commodity definition from ''grain, cereal, forage, fodder, and straw, group 16, fodder'' to ''grain, cereal, forage, fodder, and straw, group 16, stover'' to be consistent with the general food and feed commodity vocabulary EPA uses for tolerances and exemptions.

## V. Conclusion

Therefore, tolerances are established for residues of prosulfuron, (*N*-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]-2-(3,3,3-trifluoropropyl)benzenesulfonamide), including its metabolites and degradates, in or on grain, cereal, forage, fodder, and straw, group 16, stover at 0.01 ppm; grain, cereal, forage, fodder, and straw, group 16, forage at 0.10 ppm; grain, cereal, forage, fodder, and straw, group 16, hay at 0.20 ppm; grain, cereal, forage, fodder, and straw, group 16, straw at 0.02 ppm; and grain, cereal, group 15 at 0.01 ppm.

In addition, EPA has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of prosulfuron not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression. EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

## VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

## VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 2017.

**Michael L. Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.481, paragraph (a) is revised to read as follows:

### § 180.481 Prosulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of prosulfuron,

including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only prosulfuron (*N*-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]-2-(3,3,3-trifluoropropyl) benzenesulfonamide) in or on the commodity.

| Commodity | Parts per million |
|---|---|
| Grain, cereal, forage, fodder, and straw, group 16, forage | 0.10 |
| Grain, cereal, forage, fodder, and straw, group 16, hay | 0.20 |
| Grain, cereal, forage, fodder, and straw, group 16, stover | 0.01 |
| Grain, cereal, forage, fodder, and straw, group 16, straw | 0.02 |
| Grain, cereal, group 15 | 0.01 |

* * * * *

[FR Doc. 2017–14315 Filed 7–6–17; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 269

**[Docket No. FRA–2016–0023; Notice No. 4]**

**RIN 2130–AC60**

## Competitive Passenger Rail Service Pilot Program

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes operated by Amtrak. The final rule is required by statute.

**DATES:** This final rule is effective on September 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Brandon White, Office of Railroad Policy and Development, FRA, 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 493–1327, or Zeb Schorr, Office of Chief Counsel, FRA, 1200 New Jersey Ave. SE., Mail Stop 10, Washington, DC 20590, (202) 493–6072.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*a. Executive Summary of Final Rule*

This final rule implements a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes (as defined in 49 U.S.C. 24102), and operated by Amtrak on the date of enactment of the Passenger Rail Reform and Investment Act of 2015 (title XI of the Fixing America's Surface Transportation (FAST) Act, Pub. L. 114–94, 129 Stat. 1312, 1660–1664 (2015)). The final rule establishes a petition, notification, and bid process by which FRA will evaluate, and ultimately select, bids to provide passenger rail service over particular long-distance routes. The final rule also, among other things, addresses FRA's execution of a contract with the winning bidder awarding the right and obligation to provide intercity passenger rail service over the route, along with an operating subsidy, subject to the 49 U.S.C. 24405 grant conditions and such performance standards as the Secretary of Transportation (Secretary) may require.

*b. Procedural History*

By notice of proposed rulemaking (NPRM) published on June 22, 2016 (81 FR 40624), FRA proposed a competitive passenger rail service pilot program in response to a statutory mandate in section 11307 of the FAST Act. In response to a request for a public hearing, FRA held a public hearing on September 7, 2016. FRA also extended the comment period for the NPRM to October 7, 2016 to allow time for interested parties to submit written comments in response to information provided at the public hearing.

FRA received comments from the American Association of Private Railroad Car Owners, the Association of Independent Passenger Rail Operators, the National Association of Railroad Passengers, Herzog Transit Services, Corridor Capital, Iowa Pacific Holdings, Florida East Coast Industries, Erie Lackawanna Railroad, the North Carolina Department of Transportation, the National Railroad Passenger Corporation (Amtrak), the Brotherhood of Maintenance of Way Employees Division/International Brotherhood of Teamsters, the Brotherhood of Railroad Signalmen, the International Association of Sheet Metal, Air, Rail, and Transportation Workers/Mechanical Division, the Transportation Trades Department of the American Federation of Labor-Congress of Industrial Organizations, and one individual.

Comments are addressed in the preamble. Some comments were generally supportive of the NPRM, and other comments were generally unsupportive of the NPRM.

*c. Timelines Established by the Final Rule*

The final rule establishes deadlines for filing petitions, filing bids, and the execution of contract(s) with winning bidders.

As to the filing of petitions, § 269.7(b) of the final rule requires the filing of a petition with FRA no later than 180 days after the effective date of the final rule implementing the pilot program (petition window). In the NPRM, FRA proposed a 60 day petition window from the publication of the final rule. Several commenters stated the proposed 60 day petition window should be extended to 120 or 180 days. Other commenters stated the petition window should remain 60 days. Still other commenters stated the petition window should be eliminated and the pilot program should remain available indefinitely.

After careful consideration of these comments, the final rule establishes a 180 day petition window, balancing the need for sufficient time to produce quality petitions and bids with the desire to encourage competition and efficiently use Federal and Amtrak resources. This extended time period will ensure an eligible petitioner has an adequate amount of time to file a petition. It is important to also note the final rule establishes the effective date of the final rule as the trigger for the 180 day period (rather than the date the final rule is published, as proposed in the NPRM). This change effectively gives eligible petitioners 60 more days (in addition to the 180 days) to file a petition. The final rule does not adopt the suggestion of some commenters that the pilot program be ''evergreen.'' First, the FAST Act does not require the pilot program to remain available indefinitely. Second, an evergreen pilot program may unduly burden the FRA and Amtrak by imposing an indefinite regulatory burden to maintain program readiness. Finally, FRA believes competition is best fostered by a limited duration petition window allowing FRA to evaluate multiple bidders competing for the same route.

When an eligible petitioner files a petition, under § 269.9(a) of the final rule, FRA will notify the petitioner and Amtrak of receipt of the petition, and publish a notice of receipt in the **Federal Register**, not later than 30 days after receipt. *See* 49 U.S.C. 24711(b)(1)(B)(i).

Section 269.9(b) of the final rule addresses the filing of bids. This section requires both the bidder and Amtrak, if Amtrak so chooses, to submit complete bids to FRA not later than 120 days after

FRA publishes a notice of receipt in the **Federal Register** under § 269.9(a).

As to the award and execution of contracts with winning bidders (who are not or do not include Amtrak), § 269.11(b)(1) of the final rule first requires FRA to publish a notice for public comment for 30 days in the **Federal Register** announcing the selection. Section 269.13(a) then requires FRA to execute a contract with a winning bidder not later than 270 days after the § 269.9(b) bid deadline.

A commenter stated FRA should notify Amtrak of the date when the winning bidder's service will replace Amtrak's service on the affected route. The commenter recommended requiring a minimum 210-day notice period to allow Amtrak sufficient time to notify impacted employees, suppliers, and passengers. As discussed, § 269.11(b)(1), consistent with the requirements of the FAST Act, requires FRA to publish a notice identifying the winning bidder and the route, among other things, for public comment for 30 days.

In addition, the FAST Act, and this final rule, requires FRA to execute a contract with a winning bidder not later than 270 days after the bid deadline § 269.9 establishes. The NPRM did not specifically address when a winning bidder would assume operation of a route. The precise timing of a new operation will depend upon the winning bidder's readiness to assume operations, the availability and amount of an operating subsidy, as well as the resolution of logistics associated with a change in operator. It may be most appropriate for the new operator to begin operations at the beginning of a new Federal fiscal year, which would facilitate both the payment of the operating subsidy, if one is requested and available, and FRA's efficient administration of the pilot program. FRA will work with the winning bidder and Amtrak to identify a safe, timely, and reasonable date on which the winning bidder will assume operations.

*d. Operating Subsidy*

The FAST Act requires the Secretary to award an operating subsidy to a winning bidder that is not or does not include Amtrak (although a bidder may elect to not receive an operating subsidy). 49 U.S.C. 24711(b)(1)(E)(ii). Specifically, the operating subsidy, as determined by the Secretary, is for the first year at a level that does not exceed 90 percent of the level in effect for that specific route during the fiscal year preceding the fiscal year the petition was received, adjusted for inflation, and any subsequent years under the same calculation, adjusted for inflation.

In addition, the FAST Act requires FRA to provide to Amtrak an appropriate portion of the applicable appropriations to cover any cost directly attributable to the termination of Amtrak service on the route and any indirect costs to Amtrak imposed on other Amtrak routes as a result of losing service on the route operated by the winning bidder. 49 U.S.C. 24711(e)(2). Any amount FRA provides to Amtrak under the prior sentence would not be deducted from, or have any effect on, the operating subsidy 49 U.S.C. 24711(b)(1)(E)(ii) requires.

Consistent with the requirements of the FAST Act, § 269.13(b)(1) of the NPRM required FRA to award to a winning bidder that is not or does not include Amtrak an operating subsidy ''as determined by FRA'' for the first year at a level that does not exceed 90 percent of the level in effect for that specific route during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation.

Commenters requested more clarity on FRA's determination of the operating subsidy amount. Because the operating portion of FRA's annual grant to Amtrak's National Network is the authorized source of funding for the operating subsidy, only cost categories associated with the operating portion of Amtrak's grant are eligible costs for the operating subsidy under this pilot program. Consequently, § 269.13(b)(1) of the final rule states the operating subsidy is based on Amtrak's publically-reported fully-allocated operating costs of the route for the prior fiscal year, excluding costs related to Other Postretirement Employee Benefits (OPEB's), Amtrak Performance Tracking System (APT) Asset Allocations, Project Related Costs, and Amtrak Office of Inspector General activities. This data is publicly available on Amtrak's Web site in a comprehensive Monthly Performance Report (the final audited September report contains information for the entire fiscal year). Amtrak also reports this data to Congress and the Secretary in the monthly National Railroad Passenger Corporation Progress Report.

To avoid confusion, FRA will post, and update as necessary, the calculation and maximum subsidy amount available for each route based on the most recent full fiscal year data available on its Web site. For subsequent fiscal years, FRA will award the same operating subsidy, adjusted for inflation, again subject to the availability of Congressional appropriations. FRA will also provide the operating subsidy calculations for each long-distance route on the FRA Web site for reference by eligible petitioners.

One commenter questioned the accuracy of Amtrak's fully-allocated route costs, favoring instead reporting of variable costs by route at a detailed account level. FRA disagrees. Fully allocated costs are a component of the cost accounting methodology formed by the creation of APT, a statutorily mandated system developed by FRA, in close collaboration with Amtrak. Amtrak has used APT effectively since 2009 to assign costs at a route level. While an untested, non-public measure may provide different detail, the utility of publically available data that best aligns with Amtrak's grant is most appropriate here.

Commenters stated FRA should ensure it is using consistent, accurate financial data and that bidders should have access to actual, fully-allocated route costs for the five most recent years Amtrak operated the service. Amtrak has included the publicly reported fully-allocated operating costs in the Monthly Performance Report for at least the past five years, though reports are only posted for one year following publication. Using archived copies of these reports, FRA will post on its Web site Amtrak's fully allocated operating loss for each Long Distance route since FY2012.

Commenters also stated FRA should provide more detail about the costs comprising the total operating subsidy, including route specific costs. Another commenter, on the other hand, objected to the disclosure of Amtrak's route specific information. FRA declines to provide the more detail requested. FRA notes that the summary financial results reported in Amtrak's Monthly Performance Reports list actual costs on a system-wide basis across various revenue and expense categories. In addition, FRA believes a bidder should base its costs on its own needs and business case, rather than Amtrak route specific information.

Some commenters suggested FRA include interest and depreciation costs in the operating subsidy to account for equipment related expenses associated with operating the service. Another commenter stated the operating subsidy should exclude capital costs, depreciation, and other non-cash costs. The final rule does not include depreciation and interest costs in the formulation of the operating subsidy. This approach is consistent with the operating portions of FRA's annual grants to Amtrak for the Northeast Corridor and National Network accounts, which do not include Amtrak

rolling stock depreciation or interest-incurring debt.

A commenter stated FRA should ensure any award to a winning bidder is consistent with the objective of reducing Federal funding requirements for long distance routes. FRA will make judicious operating subsidy determinations to ensure the efficient use of Federal funds.

A commenter also stated FRA should address how it will reimburse costs that non-Amtrak service sponsors may incur. FRA is not authorized under the FAST Act to directly reimburse sponsors of Amtrak service. As discussed, the FAST Act directs the Secretary to provide Amtrak an appropriate portion of the applicable appropriations to cover any cost directly attributable to the termination of Amtrak service on the route and any indirect costs to Amtrak imposed on other Amtrak routes as a result of losing service on the route operated by the winning bidder. *See* 49 U.S.C. 24711(e)(2).

A commenter sought clarity regarding the basis upon which FRA may not provide funding to a winning bidder. FRA is not authorized to provide funding in excess of appropriated levels. The FAST Act authorizes the Secretary to fund the operating subsidy by withholding such sums as are necessary from the amount appropriated to the Secretary for the use of Amtrak for activities associated with Amtrak's National Network. FAST Act sec. 11101(e). However, if Congress does not appropriate funds in a manner so as to allow the Secretary to pay an operating subsidy under this pilot program, then the Secretary cannot award an operating subsidy to a winning bidder. In other words, the award of any operating subsidy to a winning bidder is subject to the availability of funding. Accordingly, the Secretary's contract with a winning bidder will not award an operating subsidy unless the award is authorized by both the FAST Act and the applicable appropriations act. In addition, the Secretary will award the operating subsidy to the winning bidder annually and, again, only as authorized by the FAST Act and the applicable appropriations act (*i.e.,* the Secretary will not award all four years of the operating subsidy at one time).

A commenter expressed concern that, in the event Congress reduces Amtrak appropriations, a winning bidder may receive disproportionately less subsidy as compared to the services remaining with Amtrak. Subject to the availability of funding for long distance services, FRA will award an operating subsidy to a winning bidder that is the same amount, adjusted for inflation, throughout the term of the contract.

*e. Agreements With Infrastructure Owners*

Under the FAST Act, an entity may only be an eligible petitioner for this pilot program if it owns the relevant rail infrastructure or has a ''written agreement'' with the relevant rail infrastructure owner (in addition to meeting the other eligible petitioner requirements discussed elsewhere in this preamble). 49 U.S.C. 24711(b)(3). The FAST Act also requires a winning bidder who does not own the relevant infrastructure to enter into a ''written agreement governing access issues'' with the owners of such infrastructure. 49 U.S.C. 24711(b)(5).

Section 269.9(b)(2)(i) of the NPRM required a bid to include any applicable agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the bidder. The NPRM did not address the nature of the ''written agreement'' necessary for an entity to submit a petition under § 269.7(b).

Because a ''written agreement'' is an eligibility requirement for many potential petitioners, § 269.7(b)(4) of the final rule requires an eligible petitioner to include, in its petition, agreements with all entities that own or control infrastructure on the long-distance route or routes over which the eligible petitioner wants to provide intercity passenger rail transportation. However, these written agreements are not required to completely address infrastructure access; rather, they must demonstrate the infrastructure owner's support for the petition.

In addition, like the NPRM, § 269.9(b)(2)(i) of the final rule then requires a bidder to submit, in its bid package, executed agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the bidder.

Several comments sought further clarity on the meaning of the term ''written agreement.'' One commenter stated a petitioner should submit written agreements with each rail carrier that owns or controls any infrastructure along the route, with their petition filed under § 269.7(b), and such agreements should address the petitioner's ability to access the infrastructure necessary for the operation of the petitioned route. Other commenters stated that negotiating the detailed terms of such access agreements take a long time, and instead proposed that, when submitting a petition, a petitioner should only need to submit a written agreement in which the infrastructure owners express a willingness to enter into a good faith discussion with the bidder.

FRA generally agrees with the latter commenters. Specifically, to ensure the efficient use of FRA and Amtrak resources, and recognizing the challenges executing agreements that completely address infrastructure access, as discussed, the final rule requires a petition to include agreements with all entities that own or control infrastructure on the long-distance route or routes over which the eligible petitioner wants to provide intercity passenger rail transportation. As described, these agreements are not required to completely address infrastructure access; rather, they must demonstrate the infrastructure owner's support for the petition. As noted, the final rule also requires an eligible petitioner to submit, as part of the bid package, executed agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the eligible petitioner.

Some commenters expressed concern Amtrak, as an owner of infrastructure on most of the long distance routes, could refuse to enter into access agreements with eligible petitioners. However, in the event of such a dispute, the statute and the final rule make clear the Surface Transportation Board (STB) may require Amtrak to provide access to Amtrak facilities if such access is necessary to operate the pilot route. 49 U.S.C. 24711(g). Access to Amtrak-owned facilities, among other things, is discussed elsewhere in this preamble.

Lastly, several commenters stated an eligible petitioner could develop an operating plan that contracts with Amtrak to provide operating crews and uses Amtrak's existing access agreement, as long as the infrastructure owners agreed with the operating plan. FRA disagrees. First, private partnerships between Amtrak and third parties may of course occur outside of this pilot program, and, are, in fact encouraged by section 216 of PRIIA and 49 U.S.C. 24101. Second, the FAST Act does not authorize an eligible petitioner to use Amtrak's right to access infrastructure owned by a third party. *See* 49 U.S.C. 11307(b)(5) (requiring a winning bidder to enter into a written agreement governing access with the relevant infrastructure owners); 49 U.S.C. 11307(b)(3) (defining a petitioner as eligible where it owns the infrastructure or has a written agreement with a rail carrier that owns the infrastructure); and 49 U.S.C. 11307(j) (stating that nothing in section 11307 shall affect Amtrak's access rights to railroad rights-of-way and facilities).

Finally, the FAST Act states the requirement that the Secretary award an operating subsidy to a winning bidder ''shall not apply to a winning bidder that is or includes Amtrak.'' 49 U.S.C. 11307(b)(2). In other words, a bidder who is partnering with Amtrak to provide a service under the pilot program would not be entitled to an operating subsidy award under the pilot program.

*f. Level of Service*

Section 269.9(b)(1) of the final rule, in part, requires a bidder to provide FRA with sufficient information to evaluate the level of service described in the bid. In addition, § 269.13(b)(4) requires a winning bidder to provide intercity passenger rail transportation over the route that is no less frequent, nor over a shorter distance, than Amtrak provided on the route.

One commenter stated the final rule should provide that, upon request, the Secretary would make available a detailed and specific definition of Amtrak's level of service for any route subject to the pilot program. FRA disagrees. As described, the final rule requires, at minimum, a winning bidder to provide a level of service that is no less frequent, nor over a shorter distance than Amtrak provided on the route. *See* 49 CFR 269.13(b)(4). The frequency and distance of Amtrak's long-distance routes is publically available. It is important to note, as described in § 269.9(b)(1), beyond the frequency and distance requirements, FRA's bid evaluations will take into account all aspects of service described in the bid.

Several commenters stated the final rule should allow a bidder to operate alternate service alignments between the endpoints of a route. Similarly, a commenter stated the final rule should allow a bidder to vary the schedule and services of the particular train. One other commenter, on the other hand, stated a winning bidder must serve all of the same stations Amtrak currently serves on the route. The final rule does not prohibit a bidder from proposing to operate an alternate alignment between the endpoints of a route. However, a bid proposing the relocation, elimination, or addition of a station at which the service will stop should be accompanied by evidence of significant support from the communities impacted by such changes so FRA may understand and evaluate the proposed service.

A commenter stated FRA should favorably weight bids that maintain existing connections with other intercity passenger trains and buses to promote the national passenger train and connecting intercity bus network. A commenter also stated the final rule should encourage innovative ideas, including enhanced food and beverage service, and improved connectivity and amenities. As stated, FRA's bid evaluations will take into account all aspects of service described in the bid. 49 CFR 269.9(b)(1).

Finally, one commenter stated the final rule should expand the pilot program to discontinued Amtrak long distance routes. However, the FAST Act limits the pilot program to the long distance routes defined in 49 U.S.C. 24102 and operated by Amtrak on the date of enactment of the FAST Act. *See* 49 U.S.C. 24711(a).

*g. Performance Standards*

The FAST Act requires a winning bidder to, at a minimum, meet the performance ''required of or achieved by Amtrak on the applicable route during the last fiscal year'' and subjects any award to a winning bidder ''to such performance standards.'' 49 U.S.C. 24711(b)(1)(E)(i) and (b)(4). In addition, the FAST Act authorizes the Secretary to require performance standards above that achieved by Amtrak. 49 U.S.C. 24711(b)(1)(E)(i). The final rule requires bidders to describe how the passenger rail service would meet or exceed the performance required of or achieved by Amtrak on the applicable route during the last fiscal year, and states that, at a minimum, the description must include, for each Federal fiscal year fully or partially covered by the bid, a projection of the route's expected Passenger Miles per Train Mile, End-Point and All Stations On-Time Performance, Host Railroad and Operator Responsible Delays per 10,000 train miles, Percentage of Passenger Trips to/from Underserved Communities, Service Interruptions per 10,000 Train Miles due to Equipment-Related Problems, and customer service quality. 49 CFR 269.9(b)(9). Likewise, the final rule conditions the operating subsidy rights upon the winning bidder's compliance with performance standards FRA may require, but which, at a minimum, must meet or exceed the performance required of or achieved by Amtrak on the applicable route during the fiscal year immediately preceding the year the bid is submitted. 49 CFR 269.13(b)(5).

Commenters sought additional clarity on the performance standards and, in particular, how FRA would evaluate the performance of a winning bidder. To determine whether a winning bidder has met or exceeded the performance achieved by Amtrak on the applicable route during the last fiscal year, as required by the FAST Act, FRA will require a winning bidder to report the performance standards discussed in the previous paragraph to FRA on a quarterly basis. These performance categories are available publically in the Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations available on FRA's Web site. Additionally, a winning bidder must also provide a monthly ridership report to FRA. Finally, a bidder must explain in its bid submission how it will achieve and report on these performance standards.

A commenter stated FRA should define, or otherwise make available, the Amtrak performance standards achieved on each long-distance route. This data is publicly available on FRA's Web site in the Quarterly Reports on the Performance and Service Quality of Intercity Passenger Train Operations.

One commenter stated the final rule should impose performance standards on Amtrak if it submits a bid. Another commenter stated, on the other hand, FRA is not authorized to impose such standards on Amtrak. The FAST Act does not require the imposition of performance standards on Amtrak. However, if Amtrak submits a bid and is selected, then Amtrak should comply with the performance standards described in the bid.

Lastly, a commenter stated the final rule should require Amtrak to identify future savings or new revenues if their counterbid is lower than Amtrak's current route costs. FRA does not believe the final rule needs to specifically require Amtrak to produce such information. Section 269.9(b) requires bidders and Amtrak to submit bids containing a financial plan, among other requirements, which enables FRA to fully evaluate the bids. Furthermore, if FRA does not receive sufficient information, FRA may request supplemental information from the bidder and/or Amtrak under § 269.9(c).

*h. Access*

Section 24711(c) of the FAST Act requires Amtrak, if necessary to carry out the purposes of the pilot program, to provide access to the ''Amtrak-owned reservation system, stations, and facilities directly related to operations of the awarded routes to the eligible petitioner awarded a contract.'' Section 24711(g) further provides, in the event Amtrak and the winning bidder cannot agree upon the terms of such access, either party may petition the STB to determine ''whether access to Amtrak's facility or equipment, or the provisions of services by Amtrak is necessary . . . and whether the operation of Amtrak's other services will not be unreasonably

impaired by such access.'' Section 24711(g) goes on to provide, if the STB determines such access is necessary and Amtrak's other services will not be unreasonably impaired, then the STB must issue an order requiring Amtrak ''to provide the applicable facilities, equipment, and services . . . and determine[] reasonable compensation, liability, and other terms for the use of the facilities and equipment and the provision of the services.''

The final rule provides, consistent with the FAST Act and the NPRM, if an award is made to a bidder other than Amtrak, Amtrak must provide access to the Amtrak-owned reservation system, stations, and facilities directly related to operations of the awarded route(s) to the bidder. 49 CFR 269.15(a). For additional clarity, the final rule added a sentence stating that, if Amtrak and the eligible petitioner awarded a route cannot agree on the terms of access, then either party may petition the STB under 49 U.S.C. 24711(g). 49 CFR 269.15(a).

Commenters sought clarity regarding the meaning of the term ''facilities.'' One commenter stated ''facilities'' should include coach yards, repair shops, and Amtrak-owned track. FRA understands the term ''facilities'' to include Amtrak-owned coach yards, repair shops, and track. A commenter also stated the final rule should require Amtrak to provide access to ''Amtrak controlled'' track. However, the FAST Act only authorizes access for ''Amtrak-owned'' facilities. 49 U.S.C. 24711(c)(1).

Several commenters stated the final rule should require Amtrak to provide access to Amtrak-owned rolling stock. As stated, section 24711(c)(1) of the FAST Act specifically requires Amtrak to provide access to the ''Amtrak-owned reservation system, stations, and facilities,'' but it does not reference rolling stock. However, section 24711(g) states the STB may adjudicate disputes regarding whether Amtrak should be required to provide services or equipment. As such, either party may petition the STB for a determination about the necessity of access to Amtrak-owned equipment (to include rolling stock), among other things.

At least one commenter stated Amtrak's statutory right to access track is a ''facility'' and, therefore, Amtrak should be required to provide its access rights to a winning bidder. Another commenter stated FRA should invoke Amtrak's statutory right to access track on behalf of a winning bidder. FRA disagrees with both comments. Amtrak's right to access track is not transferrable unless specifically authorized by law. *See Application of Nat'l R. Passenger Corp. Under 49 U.S.C. 24308(a)—Springfield Terminal R. Co., Boston & M. Corp. and Portland Terminal Co.,* 3 S.T.B. 157 (1998) (stating the ''access rights that the Act allows us to grant to Amtrak belong only to Amtrak and may not be transferred to a third party 'successor or assign' unless the Act or some other provision of law specifically provides otherwise.''). Here, section 24711(j) of the FAST Act states nothing in the pilot program ''shall affect Amtrak's access rights to railroad rights-of-way and facilities.''

Similarly, a commenter stated the final rule should allow an eligible petitioner to use Amtrak train and engine crews to access track via the existing Amtrak access agreement with the host railroad. A commenter also stated Amtrak should be required to provide Amtrak train crews to a bidder, as it would constitute a ''provision of services'' allowed under section 24711(g)(1)(A) of the FAST Act. First, as discussed, Amtrak's right to access track may not be transferred under this pilot program. Further, a bidder who is partnering with Amtrak to provide a service under the pilot program would not be entitled to an operating subsidy award under the pilot program. The FAST Act makes clear that an operating subsidy is only available to a winning bidder who is not or does not include Amtrak. 49 U.S.C. 24711(b)(2).

A commenter stated Amtrak need only provide access if FRA determines the access is necessary. However, section 24711(g) of the FAST Act states the STB, not the FRA, is responsible for determining whether access is necessary.

Some commenters stated the cost allocation policy developed under section 209 of the Passenger Rail Investment and Improvement Act of 2008 should be used to calculate cost for the use of Amtrak's assets. Another commenter stated FRA, not other bidders, should request from Amtrak the cost of providing access to specific facilities and services a bidder wants Amtrak to provide. However, neither approach is required by the FAST Act. Rather, the parties must agree on cost and, if they cannot, either party may petition the STB for a determination. *See* 49 U.S.C. 24711(g) (stating that, in the event of a dispute, the STB ''determines reasonable compensation, liability, and other terms,'' among other things). It is the bidder's sole responsibility to initiate the request to Amtrak to provide the access, to carry out any resulting negotiations, and to determine impacts on the bid.

A commenter stated the rule should require FRA to publish Amtrak's costs to provide access to its reservation system, stations, and facilities, and FRA should condition Amtrak's receipt of Federal operating funds on Amtrak's participation. Similarly, a commenter stated FRA should set forth minimum conditions of cooperation, along with reasonable ranges of costs for the joint use of facilities and services. Another commenter stated FRA should articulate clear definitions, prior to the submittal of any bids, of the costs for Amtrak to operate facilities or equipment. Lastly, a commenter suggested there should be a set rate for Amtrak equipment used by a winning bidder. FRA disagrees and does not believe these approaches are necessary or consistent with the FAST Act. As described above, section 24711(g) provides, in the event Amtrak and the winning bidder cannot agree upon the terms of access, either party may petition the STB to resolve the dispute.

A commenter stated that, if a dispute between Amtrak and a bidder is submitted to the STB for resolution, then a bidder may use the Amtrak-owned facilities during the period of time the dispute is with the STB. FRA disagrees. Indeed, the dispute may involve whether the bidder is in fact entitled to access the facilities at issue. Further, a bidder should not need to access the facilities because the terms of access would have to be resolved in advance of bidder operations.

A commenter also stated the final rule should require Amtrak to provide access to its data relating to operations, costs, facilities, ridership and other information to enable a bidder to develop an informed business plan and proposal. The FAST Act does not authorize this approach. As discussed, the bidder is responsible for collecting the information necessary to prepare their business plan and proposal.

*i. Employee Protections*

The FAST Act subjects winning bidders to the grant conditions in 49 U.S.C. 24405. *See* 49 U.S.C. 24711(c)(3) (''If the Secretary awards the right and obligation to provide intercity rail passenger transportation over a route described in this section to an eligible petitioner . . . the winning bidder . . . shall be subject to the grant conditions under section 24405.'').

The NPRM and this final rule likewise subject winning bidders to these grant conditions. *See* 49 CFR 269.13(b)(6) (''[T]he contract between FRA and a winning bidder that is not or does not include Amtrak must . . . [s]ubject the winning bidder to the grant conditions established by 49 U.S.C. 24405.''). Section 24405(c), among other things, states the Secretary shall require, and

''the applicant agrees to comply with . . . the protective arrangements that are equivalent to the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976'' (4R Act). 49 U.S.C. 24405(c)(2)(B). The protective arrangements established under the 4R Act are set forth in a Secretary of Labor letter and appendix dated July 6, 1976.

Several commenters sought clarification about the 49 U.S.C. 24405 grant condition concerning employee protections. One commenter stated the 4R Act employee protections should not apply to this pilot program. FRA disagrees. The FAST Act subjects a winning bidder to the grant conditions of section 24405, which include the 4R Act equivalent employee protections. *See* 49 U.S.C. 24711(c)(3).

Several commenters stated the FRA should adopt employee protections equivalent to those established under the 4R Act but adjusted to fit the pilot program, and should issue guidance on the adjusted protections. FRA declines to use this rulemaking to adopt employee protections equivalent to the almost forty-year old 4R Act employee protections set forth by the Secretary of Labor for the purpose of resolving imprecisions in the application of those protections to this pilot program. The FAST Act subjects winning bidders, some of whom may not be railroads, to the grant conditions under section 24405. In so doing, the FAST Act recognizes the possibility that a non-railroad winning bidder may directly provide the 4R Act equivalent employee protections.

A commenter also stated FRA should issue guidance on a winning bidder's responsibility to employees under the FAST Act, while also stating such employee costs should be included in any petition filed with FRA under the pilot program. If needed, FRA may issue pilot program guidance. However, FRA disagrees with the suggestion to include employee costs in the petition. The petition requirements under § 269.7 require basic information from eligible petitioners; it is premature to require detailed cost information in the petition. It is in the bid where an eligible petitioner provides FRA with the information necessary to evaluate a bid, including the submission of a required staffing plan that addresses the terms of work for prospective and current employees for the proposed service, among other things. *See* § 269.9(b)(5).

Commenters also stated the NPRM did not indicate how FRA would apply the employee protections. FRA disagrees. Consistent with the FAST Act requirement, the NPRM and the final rule require compliance with section 24405 in the contract between FRA and a winning bidder. *See* 49 CFR 269.13(b)(6). FRA declines to adopt the suggestion of some commenters to require a winning bidder to directly provide the 4R Act equivalent employee protections. As discussed, a winning bidder must comply with section 24405, which includes the 4R Act equivalent employee protections. However, the FAST Act does not require this obligation to take the form of an agreement directly between the winning bidder and the relevant union. Although that approach is certainly permissible, a winning bidder may also by agreement bestow the obligation to provide the employee protections on another appropriate entity (such as the applicable railroad). In other words, a winning bidder may comply with the 4R Act equivalent employee protections requirement of section 24405 directly or by agreement.

Lastly, one commenter suggested costs associated with providing the 4R Act equivalent employee protections should not be deducted from the operating subsidy awarded to a winning bidder. The 4R Act equivalent employee protection costs are the responsibility of a winning bidder that is not or does not include Amtrak and do not impact the calculation of the operating subsidy.

## II. Section-by-Section Analysis

*Section 269.1 Purpose*

This section provides that the final rule carries out the statutory mandate in 49 U.S.C. 24711 requiring FRA, on behalf of the Secretary, to implement a pilot program to competitively select eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes, as defined in 49 U.S.C. 24102, and operated by Amtrak on the date of enactment of the FAST Act.

A commenter stated an eligible petitioner should be able to decide the route(s) on which they bid and should be able to bid on inactive routes. The pilot program does not apply to inactive routes. The FAST Act limits the pilot program to the long-distance routes, as defined in 49 U.S.C. 24102, operated by Amtrak on the date of enactment of the FAST Act. 49 U.S.C. 24711(a).

A commenter also stated FRA should take primary responsibility in any contract with a winning bidder to ''launch'' the service. FRA disagrees. The FAST Act directs FRA to implement the pilot program for the competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three-long distance routes. The FAST Act does not require the FRA to take primary responsibility for a winning bidder's execution of the service.

*Section 269.3 Application*

Paragraph (a) of this section provides the pilot program is not available to more than three Amtrak long-distance routes, as defined in 49 U.S.C. 24102. This paragraph is based on the statutory directive in 49 U.S.C. 24711(a).

Paragraph (b) of this section provides that any eligible petitioner awarded a contract to provide passenger rail service under the pilot program can only provide such service for a period not to exceed four years from the date the winning bidder commenced service and, at FRA's discretion on behalf of the Secretary, FRA may renew such service for one additional operation period of four years. This paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(A).

A commenter stated FRA should address the transition of service from a successful winning bidder back to Amtrak. Although there may be challenges that arise in such a situation, the FAST Act does not require FRA to address this issue in the rulemaking, nor is it prudent in this rulemaking to attempt to address possible outcomes that may occur many years from now.

Commenters also stated the length of the contract should be longer than four years, for various reasons. However, the FAST Act requires one four year term, and allows for one four year renewal term at the discretion of the Secretary.

*Section 269.5 Definitions*

This section contains the definitions for the final rule. This section defines the following terms: Act; Administrator; Amtrak; Eligible petitioner; File and Filed; Financial plan; FRA; Operating plan; and Long-distance route.

This section defines ''eligible petitioner'' to mean: A rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route, or another rail carrier that has a written agreement with a rail carrier or rail carriers that own such infrastructure; a State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for providing intercity rail passenger transportation with a written agreement with the rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation; or a State, group of States, or State-supported joint powers authority or other sub-State

governance entity responsible for providing intercity rail passenger transportation and a rail carrier with a written agreement with another rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation.

A commenter stated the final rule should amend the definition of the term ''eligible petitioner'' to make clear it is not necessary for a petitioner to obtain a written agreement with Amtrak for Amtrak-owned infrastructure prior to submitting a petition. However, the definition used in the final rule is taken directly from the FAST Act. 49 U.S.C. 24711(b)(3). With that said, Amtrak is required to provide access to Amtrak-owned facilities, among other things. 49 U.S.C. 24711(c)(1). As such, FRA will take both of these FAST Act directives into account when reviewing petitions received under this program.

This section defines ''financial plan'' to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds, including the operating subsidy amount) attributable to the route; and a statement of the assumptions underlying the financial plan's contents.

In addition, this section defines ''operating plan'' to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; connectivity with other intercity transportation services; compliance with applicable Service Outcome Agreements, and a statement of the assumptions underlying the operating plan's contents. The final rule added ''connectivity with other intercity transportation services'' and ''compliance with applicable Service Outcome Agreements'' in response to comments. The final rule requires bidders to include a financial plan and an operating plan—as those terms are defined here—in their bids. These definitions ensure that bids contain sufficient information for evaluation.

A commenter stated the final rule should specifically state that, for purposes of the operating plan, a bidder may assume access to Amtrak facilities and stations. This revision is not necessary. The final rule requires a bidder to describe the assumptions underlying the operating plan's contents. And, as discussed elsewhere in this preamble, the final rule states that Amtrak must provide access to the Amtrak-owned reservation system, stations, and facilities directly related to operations of the awarded route(s) to the bidder.

This section also defines ''long-distance route'' to mean those routes described in 49 U.S.C. 24102(5) and operated by Amtrak on the date the FAST Act was enacted. This definition is based on the statutory directive in 49 U.S.C. 24711(a).

*Section 269.7 Petitions*

Paragraph (a) of this section provides an eligible petitioner may petition FRA to provide intercity passenger rail transportation over a long-distance route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(c). This paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(A).

Paragraph (b) of this section provides a petition submitted to FRA under this rule must: Be filed with FRA no later than 180 days after the effective date of the competitive passenger rail service pilot program final rule; describe the petition as a ''Petition to Provide Passenger Rail Service under 49 CFR part 269''; describe the long-distance route or routes over which the petitioner wants to provide intercity passenger rail transportation and the Amtrak service the petitioner wants to replace; and, if applicable, provide an executed copy of all written agreements with all entities that own infrastructure on the long-distance route or routes over which the eligible petitioner wants to provide intercity passenger rail transportation. This paragraph is intended to ensure a petition provides clear notice to FRA and the petitioner is statutorily eligible to participate in the program.

*Section 269.9 Bid Process*

Paragraph (a) of this section provides that FRA would notify the eligible petitioner and Amtrak of receipt of a petition filed with FRA by publishing a notice of receipt in the **Federal Register** not later than 30 days after FRA receives a petition. This paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(B)(i).

Paragraph (b) of this section describes the bid requirements, including that a bid must be filed with FRA no later than 120 days after FRA publishes the notice of receipt in the **Federal Register** under § 269.9(a). Paragraph (b) further provides the detailed information such bids must include. This paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(C).

A commenter stated a bidder should not be constrained due to their prior experience with passenger rail service. The final rule's bid requirements apply to all bidders and Amtrak, regardless of experience in passenger rail service.

A commenter also stated the final rule should require a bidder to provide written documentation that any state(s) providing funding for a route concur with a bid to provide service over the route. Another commenter, on the other hand, disagreed and stated FRA should be responsible for obtaining concurrence from a state providing funding for a route. For routes receiving funding from a state or states, section 24711(b)(1)(D) of the FAST Act requires for each bid received, ''the Secretary have the concurrence of the State of States that provide funding for that route.'' FRA understands this requirement to be the obligation of the bidder, not FRA. The bidder is in the best position to obtain such concurrence, and, of course, the support of the state or states is critically important to the bidder's ability to operate the service. The final rule incorporates this requirement in § 269.9(b)(12).

A commenter stated the description of the capital needs for the planned service under § 269.9(b)(6) should include projected capital expenditures for each Federal fiscal year fully or partially covered by the bid. FRA agrees, and the final rule, like the NPRM, requires this information. Specifically, § 269.9(b)(2)(i) requires a bid to include a financial plan, and § 269.5 defines the term ''financial plan'' as a plan that contains, for each Federal fiscal year fully or partially covered by the bid, an annual projection of the capital expenditure requirements attributable to the route, among other things.

A commenter also stated a bid should include a breakdown of the projected capital expenditures required to comply with the Americans with Disabilities Act, applicable FRA safety regulations, and other applicable laws and regulations. In response to this comment, FRA amended: (1) § 269.9(b)(11) of the final rule to require an eligible petitioner to describe its compliance with all applicable Federal, state, and local laws; and (2)

§ 269.9(b)(6) of the final rule to make clear that an eligible petitioner's description of the capital needs for the passenger rail service include in detail any costs associated with compliance with Federal law and regulations. These revisions will help FRA evaluate the bid and whether the bid credibly assesses the capital expenditures required to lawfully operate service on the route.

Lastly, a commenter stated the final rule should specify the documentation requirements and procedures applicable to bidders who are new passenger rail service operators to ensure compliance with all applicable safety requirements. Section 269.9(b)(7) of the final rule requires an eligible petitioner in its bid package to describe in detail the bidder's plans for meeting all FRA safety requirements. It is not necessary for this rulemaking to fully describe the regulatory process a new operator will use to initiate service.

Paragraph (c) of this section provides FRA may request supplemental information from a bidder and/or Amtrak if FRA determines it needs such information to adequately evaluate a bid. Such a request may seek information about the costs related to the service Amtrak would still incur following the cessation of service, including the increased costs for other services. FRA will establish a deadline by which the bidder and/or Amtrak must submit the supplemental information to FRA.

A commenter stated this section should require FRA to seek such information from Amtrak, including information from Amtrak about the feasibility of the proposed service, the potential impairment to Amtrak's other services, or the cost of providing access to Amtrak's facilities or equipment. FRA agrees that, when evaluating a bid, additional information may be needed, and FRA may request supplemental information under § 269.9(c). However, requiring FRA to request supplemental information is not necessary, and would overly burden FRA when it does not need supplemental information to evaluate a bid.

*Section 269.11 Evaluation*

Paragraph (a) of this section provides that FRA will select a winning bidder by evaluating the bids based on the requirements of part 269.

A commenter stated the evaluation criteria should include the impact of an award on the Federal funding requirements for intercity passenger rail. Another commenter, on the other hand, stated that any claimed increase in Amtrak's cost, or other negative financial performance impacts, should not be evaluated under § 269.11 (and referenced 49 U.S.C. 24711(e)(2)). As stated above, FRA will evaluate the bids based on the requirements of part 269, and § 269.9(b)(10) of the final rule requires a bidder, as part of the bid package, to analyze the reasonably foreseeable effects, both positive and negative, of the passenger rail service on other intercity passenger rail services. Section 24711(e)(2) of the FAST Act is not relevant to the evaluation of bids. Rather, section 24711(e)(2) concerns the calculation of attributable costs that may be provided to Amtrak if there is a winning bidder other than Amtrak (and states these attributable costs ''shall not be deducted from'' the operating subsidy awarded to the winning bidder).

Commenters also stated low cost, or high cost, should not drive the evaluation, but rather overall bid quality should be the basis for selection. FRA will evaluate all aspects of a bid in making its determination.

A commenter stated DOT/FRA may have a conflict of interest in administering the pilot program because the Secretary is a member of the Amtrak Board of Directors. The Secretary's roles administering the pilot program and as a member of the Amtrak Board of Directors are mandated by statute. With that said, FRA will administer the pilot program fairly, in good faith, and consistent with the FAST Act.

Paragraph (b) of this section provides that, upon selecting a winning bidder, FRA will publish a notice in the **Federal Register** identifying the winning bidder, the long-distance route the bidder would operate, a detailed justification of the reasons why FRA selected the bid, and any other information the Secretary determines appropriate. FRA will request public comment for 30 days after the date FRA selects the bid. This paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(B)(iii).

*Section 269.13 Award*

Paragraph (a) of this section provides that FRA will execute a contract with a winning bidder that is not or does not include Amtrak, consistent with the requirements of § 269.13, and as FRA may otherwise require, not later than 270 days after the bid deadline § 269.9(b) establishes. This paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(E).

Paragraph (b) of this section discusses required elements of the contract between FRA and the winning bidder that is not or does not include Amtrak. This paragraph is based on the statutory directives in 49 U.S.C. 24711(b)(1)(E), (b)(4), and (c)(3).

Commenters stated FRA must ensure that any construction work contractors of a winning bidder perform complies with Davis-Bacon prevailing wage requirements. Section 269.13(b)(6) subjects winning bidders to the section 24405 grant conditions, including section 24405(c)(2)(A), which addresses prevailing wage requirements. Commenters similarly stated FRA must ensure a winning bidder complies with the applicable Buy America requirement. Likewise, § 269.13(b)(6) subjects winning bidders to the section 24405 grant conditions, including section 24405(a), which addresses the Buy America requirement.

A commenter also stated the NPRM did not address how FRA will ensure winning bidders comply with the requirement of the FAST Act subjecting winning bidders to the grant conditions in section 24405. FRA disagrees. Section 269.13(b)(6) of the NPRM and the final rule provides that any contract between FRA and a winning bidder that is not or does not include Amtrak must subject the winning bidder to these grant conditions. And, § 269.17(a) of the final rule states the FRA Administrator shall take any necessary action consistent with title 49 of the United States Code to enforce the contract where a winning bidder fails to fulfill its obligations under the contract required under § 269.13. *See* 49 U.S.C. 24711(d).

A commenter stated the contract should require the winning bidder to comply with all statutory and other legal requirements that apply to Amtrak's use of the appropriated funds. FRA agrees. For purposes of clarity, FRA added another element to the final rule stating a contract between FRA and a winning bidder must make the winning bidder subject to the requirements of the appropriations act(s) funding the contract. *See* 49 CFR 269.13(b)(7).

A commenter stated the award of the contract must also be conditioned on the bidder's demonstration, prior to the initiation of service, of compliance with all applicable Federal and state laws and regulations as well as the maintenance of adequate liability coverage for claims through insurance and self-insurance required by 49 U.S.C. 28103(c). First, as stated above, § 269.9(b)(11) of the final rule requires a bid to describe the bidder's compliance with all applicable Federal, state, and local laws. Furthermore, § 269.13(a) makes clear FRA has the discretion to not award a contract if the winning bidder is not in compliance with the law. Second, as to mandatory insurance, 49 U.S.C. 28103(c) applies to Amtrak; it does not apply to other

railroads. Nor does the FAST Act impose mandatory insurance beyond that required by 49 U.S.C. 28103. Consequently, the final rule does not impose mandatory insurance beyond what is already required by law. FRA also notes that 49 U.S.C. 28103(a)(2) establishes a rail passenger transportation liability cap, which is currently set at $294,278,983. *See* 81 FR 1289 (Jan. 11, 2016).

A commenter also stated the contract should be conditioned on the winning bidder's payment of penalties, specified in its contract with FRA, should the winning bidder fail to meet performance standards. FRA did not intend for the final rule to fully address all aspects of the contract between FRA and a winning bidder. As such, contract details concerning penalty payments are not addressed in this final rule and, instead, may be addressed at the time a winning bidder is selected.

A commenter stated that a winning bidder would be subject to the requirement in 49 U.S.C. 24321 prohibiting the use of Federal funds to cover any operating loss associated with providing food and beverage service on a route. The requirements of section 24321 apply to a winning bidder under this pilot program. *See* 49 U.S.C. 24321(d).

Lastly, a commenter stated any non-Amtrak winning bidders should be required to deal with private rail car owners in a positive manner. FRA disagrees. The FAST Act imposes no such requirement, and FRA declines to regulate how a non-Amtrak winning bidder addresses contracting with private rail car owners.

Paragraph (c) of this section provides that the winning bidder would make their bid available to the public after the bid award with any appropriate confidential or proprietary information redactions. This paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(C)(ii).

*Section 269.15 Access to Facilities; Employees*

Paragraph (a)(1) of this section provides, if an award under § 269.13 is made to a bidder other than Amtrak, Amtrak must provide access to the Amtrak-owned reservation system, stations, and facilities directly related to operations of the awarded route(s) to the bidder. For additional clarity, the final rule added a new paragraph (a)(2) stating that, if Amtrak and the eligible petitioner awarded a route cannot agree on the terms of access, then either party may petition the STB under 49 U.S.C. 24711(g). This paragraph is based on the statutory directive in 49 U.S.C. 24711(c) and (g).

Paragraph (b) of this section implements 49 U.S.C. 24711(c)(2), which states that an employee of any person, except as provided in a collective bargaining agreement, used by such eligible petitioner in the operation of a route under this section shall be considered an employee of that eligible petitioner and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak.

A commenter stated the final rule should specifically subject a winning bidder to the same rail laws as Amtrak. Section 269.15(b) of the final rule clearly provides, as stated above, that employees are subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak. Moreover, a winning bidder is subject to the section 24405 grant conditions. That includes the section 24405(b) provision that a person conducting rail operations shall be considered a rail carrier under section 10102(5). A commenter also stated the final rule should allow an eligible petitioner to contract with Amtrak for Amtrak to provide train and engine personnel. As noted above, the FAST Act limits the availability of the pilot program to a winning bidder that is not or does not include Amtrak. Furthermore, the FAST Act does not require Amtrak to provide personnel services to an eligible petitioner.

Paragraph (c) of this section states a winning bidder must provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan the winning bidder submits and the grant conditions 49 U.S.C. 24405 establish. This paragraph is based on the statutory directive in 49 U.S.C. 24711(c)(3).

Some commenters stated FRA should incorporate the FAST Act's hiring preference requirements in 49 U.S.C. 24711(c)(3) and 24405(d) into the final rule. To alert eligible petitioners of these related requirements of the FAST Act, FRA revised § 269.15(c) of the final rule to reference the section 24405 grant conditions. In addition, § 269.13(b)(6) of the NPRM and final rule incorporate the section 24405 requirements. A commenter also stated FRA must ensure that winning bidders comply with these hiring preference requirements. Section 269.13(b)(6) of the final rule provides that any contract between FRA and a winning bidder that is not or does not include Amtrak must subject the winning bidder to the section 24405 grant conditions. And, § 269.17(a) of the final rule states the FRA Administrator shall take any necessary action consistent with title 49 of the United States Code to enforce the contract where a winning bidder fails to fulfill its obligations under the contract required under § 269.13.

*Section 269.17 Cessation of Service*

This section provides under paragraph (a) that, if a bidder awarded a route under this rule ceases to operate the service, or fails to fulfill its obligations under the contract required under § 269.13, the Administrator, in collaboration with the STB, would take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including installing an interim service rail carrier, providing to the interim rail carrier an operating subsidy necessary to provide service, and re-bidding the contract to operate the service. This section further provides under paragraph (b) that the entity providing interim service would either be Amtrak or an eligible petitioner under § 269.5. This section is based on the statutory directive in 49 U.S.C. 24711(d).

## III. Regulatory Impact and Notices

1. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA evaluated this final rule consistent with Executive Orders 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). FRA prepared and placed in the docket a regulatory impact analysis addressing the economic impact of the final rule.

FRA does not expect any regulatory costs because this final rule is voluntary and does not require an eligible petitioner to take any action. In addition, the final rule is limited to not more than three long-distance routes as defined in 49 U.S.C. 24102 and operated by Amtrak on the date the FAST Act was enacted. Furthermore, the current market conditions and the investment necessary to operate a long-distance service may further serve to limit the number of eligible petitioners submitting petitions under the pilot program. Of course, if no eligible petitioners participate in the pilot program, then no costs or benefits would be incurred because of the final rule. However, FRA is estimating the costs and benefits generated when three eligible petitioners submit bids to operate long-distance rail service.

As discussed above, FRA assumed three entities will submit bids to

estimate costs for the bidding scenario. The costs are solely due to preparing and filing a bid to operate service. Amtrak may submit a bid only if another entity submitted a petition to bid on a route. To estimate the cost for preparing and submitting a bid, FRA estimated the time and cost for FRA to review each bid. FRA estimates its review cost would be approximately $49,834 per bid. Based on the costs of collecting and analyzing data, drafting a bid, and gaining approval within the organization, FRA estimates a railroad or other entity that bids on a route would incur a cost of approximately three times as much as FRA's review cost—approximately $149,503 per bid. If an entity bids on a route, for this analysis, we assumed Amtrak would also submit a bid for the same route. Amtrak should have some of the data necessary to prepare the bid available. Therefore, their cost should be lower than another entity. Based on the costs of analyzing data, drafting a bid, and gaining approval within the organization, FRA estimated Amtrak's cost to prepare and submit a bid would be twice FRA's review cost —approximately $99,669. All bid costs would be incurred during the first year. The table below shows the estimated cost for an entity and Amtrak to bid on one long-distance route.

| | FRA review cost | Railroad/other entity bidder cost (FRA cost * 3) | Amtrak cost (FRA cost * 2) |
|---|---|---|---|
| Total Cost per Bid | $49,834 | $149,503 | $99,669 |

As stated above, FRA's total burden estimate assumes three bids are submitted for long-distance routes. The total cost to entities other than Amtrak would be approximately $448,509. The total cost to Amtrak would be approximately $299,007. The sum of these two costs is $747,516. Since all petitions and bids would occur during the first year, the total cost would be approximately $747,516 over the four-year period (which could become 8 years if the Secretary renews a contract).

Some benefits are possible from this final rule. FRA cannot quantify the benefits but discussed them qualitatively in the regulatory impact analysis. If no eligible petitioners submit a bid for operating service, Amtrak would continue to operate service as it currently does. Therefore, no benefits would occur because of this final rule. However, if other entities are awarded contracts, those entities may be able to operate the service in a manner that would be beneficial to passengers.

Possible benefits include better service and lower cost. The introduction of competition in the bidding process may increase passenger rail efficiency and generate public benefits by lowering the operational subsidy, and possibly leading to better service and/or lower operating costs to society. FRA expects no change to railroad safety due to this regulation.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare a Final Regulatory Flexibility Analysis (FRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA is certifying this final rule will not have a significant economic impact on a substantial number of small entities.

FRA published an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM to discuss the potential small business impacts of the requirements in this final rule. FRA requested comments from interested parties regarding the potential economic impact on small entities that would result from the adoption of the proposals in this regulation. FRA received no comments to the NPRM on the economic impact on small entities.

Statement of the Need for and Objective of the Rule

FRA is revising 49 CFR part 269 to comply with a statutory mandate requiring the Secretary to promulgate a rule to implement a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes. The objective of this final rule is to implement the statutory mandate in FAST Act section 11307.

A Description and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

As stated above, the Regulatory Flexibility Act requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than seven million dollars. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with the SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003 (codified at appendix C to 49 CFR part 209).

The $20 million limit is based on STB's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula under 49 CFR 1201.1–1. FRA is using this definition for the final rule. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity.

This final rule applies to the following eligible petitioners: (1) A rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route, or another rail carrier that has a written agreement with a rail carrier or rail carriers that own such infrastructure; (2) a State, group of States, or State-supported joint powers authority or other sub-State governance entity

responsible for provision of intercity rail passenger transportation with a written agreement with the rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation; or (3) a State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for provision of intercity rail passenger transportation and a rail carrier with a written agreement with another rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation. The only petitioners that may be considered a small entity would be small railroads.

This final rule is voluntary for all eligible petitioners. Therefore, there are no mandates placed on large or small railroads. In addition, the final rule is limited to not more than three long-distance routes operated by Amtrak. Consequently, this final rule is not likely to affect a substantial number of small entities, and most likely will not impact any small entities. FRA requested comments on this and received none.

Small railroads face the same requirements for entry in the pilot program as other railroads. The railroad must own the infrastructure over which Amtrak operates those long-distance routes described in 49 U.S.C. 24102. Any small entity would likely only bid on a route if it was in its financial interest to do so. Accordingly, any impact on small entities would be positive. The pilot program will allow small railroads to enter a market which currently has substantial barriers.

FRA notes this final rule does not disproportionately place any small railroads that are small entities at a significant competitive disadvantage. Small railroads are not excluded from participation if they are statutorily eligible. This final rule and the underlying statute concern the potential selection of eligible petitioners to operate an entire long-distance route. If Amtrak uses 30 miles of a small railroad's infrastructure on a route that is 750 miles long, that small railroad could not apply under this final rule to operate service only over the 30 mile segment it owns (the small railroad would have to apply to operate service over the whole route). Thus, the ability to bid on a route is not constrained by a railroad's size.

This final rule allows small railroads to participate in the pilot program, but does not require them to take any action. If small entities do not believe it would be beneficial to participate in the pilot program, they are not required to take any action. Therefore, there is no significant economic impact on any small entities as a result of this final rule.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies this final rule does not have a significant economic impact on a substantial number of small entities.

3. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 and the Office of Management and Budget's (OMB) Implementing Guidance at 5 CFR 1320.3(c), collection of information means, except as provided in § 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

FRA expects the requirements of this final rule will affect less than 10 ''persons'' as defined in 5 CFR 1320.3(c)(4). Consequently, no information collection submission is necessary, and no approval is being sought from OMB at this time.

4. Environmental Impact

FRA evaluated this final rule consistent with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA determined this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because the rulemaking would not result in a change in current passenger service; instead, the program would only potentially result in a change in the operator of such service. Under section 4(c) and (e) of FRA's Procedures, FRA concludes no extraordinary circumstances exist for this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds this final rule is not a major Federal action significantly affecting the quality of the human environment.

5. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this final rule consistent with the principles and criteria in Executive Order 13132. This final rule complies with a statutory mandate, and, thus, is in compliance with Executive Order 13132.

In addition, this final rule will not have a substantial effect 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. In addition, this final rule will not have any federalism implications that impose substantial direct compliance costs on State and local governments. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

6. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform (UMR) Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, 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).'' Section 202 of the UMR Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule

that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement [detailing the effect on State, local, and tribal governments and the private sector].

The $100,000,000 has been adjusted to $155,000,000 to account for inflation. This final rule will not result in expenditure of more than $155,000,000 by the public sector in any one year, and, thus, preparation of such a statement is not required.

7. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including any notice of inquiry, advance notice of proposed rulemaking, and notice of proposed rulemaking that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) the Administrator of the OMB Office of Information and Regulatory Affairs designates as a significant energy action. FRA evaluated this final rule consistent with Executive Order 13211. FRA determined this final rule will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA concludes this regulatory action is not a ''significant energy action'' under Executive Order 13211.

Executive Order 13783 requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Executive Order 13783 defines ''burden'' to mean unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources. FRA determined this final rule will not potentially burden the development or use of domestically produced energy resources.

8. Privacy Act Information

Interested parties should be aware that anyone can search the electronic form of all written communications and comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on Apr. 11, 2000, 65 FR 19477, or you may visit *http://www.dot.gov/privacy.html.* Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**List of Subjects in 49 CFR Part 269**

Railroad employees, Railroads.

**The Rule**

For the reasons discussed in the preamble, FRA revises part 269 of chapter II, subtitle B, title 49 of the Code of Federal Regulations to read as follows:

## PART 269—COMPETITIVE PASSENGER RAIL SERVICE PILOT PROGRAM

Sec.

269.1 Purpose.
269.3 Limitations.
269.5 Definitions.
269.7 Petitions.
269.9 Bid process.
269.11 Evaluation.
269.13 Award.
269.15 Access to facilities; employees.
269.17 Cessation of service.

**Authority:** Sec. 11307, Pub. L. 114–94; 49 U.S.C. 24711; and 49 CFR 1.89.

### § 269.1 Purpose.

The purpose of this part is to carry out the statutory mandate in 49 U.S.C. 24711 requiring the Secretary to implement a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes.

### § 269.3 Limitations.

(a) *Route limitations.* The pilot program this part implements is available for not more than three Amtrak long-distance routes.

(b) *Time limitations.* An eligible petitioner awarded a contract to provide passenger rail service under the pilot program this part implements shall only provide such service for a period not to exceed four years from the date of commencement of service. The Administrator has the discretion to renew such service for one additional operation period of four years.

### § 269.5 Definitions.

As used in this part—

*Act* means the Fixing America's Surface Transportation Act (Pub. L. 114–94 (Dec. 4, 2015)).

*Administrator* means the Federal Railroad Administrator, or the Federal Railroad Administrator's delegate.

*Amtrak* means the National Railroad Passenger Corporation.

*Eligible petitioner* means one of the following entities, other than Amtrak, that has submitted a petition to FRA under § 269.7:

(1) A rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route, or another rail carrier that has a written agreement with a rail carrier or rail carriers that own such infrastructure;

(2) A State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for providing intercity rail passenger transportation with a written agreement with the rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation; or

(3) A State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for providing intercity rail passenger transportation and a rail carrier with a written agreement with another rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation.

*File* and *filed* mean submission of a document under this part to FRA at *PassengerRail.Liaison@dot.gov* on the date the document was emailed to FRA.

*Financial plan* means a plan that contains, for each Federal fiscal year fully or partially covered by the bid:

(1) An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds, including the operating subsidy amount) attributable to the route; and

(2) A statement of the assumptions underlying the financial plan's contents.

*FRA* means the Federal Railroad Administration.

*Operating plan* means a plan that contains, for each Federal fiscal year fully or partially covered by the bid:

(1) A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; connectivity with other intercity transportation services; and compliance with applicable Service Outcome Agreements; and

(2) A statement of the assumptions underlying the operating plan's contents.

*Long-distance route* means those routes described in 49 U.S.C. 24102(5) and operated by Amtrak on the date of enactment of the Act.

**§ 269.7 Petitions.**

(a) *In general.* An eligible petitioner may petition FRA to provide intercity passenger rail transportation over a long-distance route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(b).

(b) *Petition requirements.* Eligible petitioners must:

(1) File the petition with FRA no later than 180 days after September 5, 2017;

(2) Describe the petition as a ''Petition to Provide Passenger Rail Service under 49 CFR part 269'';

(3) Describe the long-distance route or routes over which the eligible petitioner wants to provide intercity passenger rail transportation and the Amtrak service that the eligible petitioner wants to replace; and

(4) If applicable, provide an executed copy of all written agreements with all entities that own infrastructure on the long-distance route or routes over which the eligible petitioner wants to provide intercity passenger rail transportation. The written agreement(s) must demonstrate the infrastructure owner's support for the petition.

**§ 269.9 Bid process.**

(a) *Notification.* FRA will notify the eligible petitioner and Amtrak of receipt of a petition filed with FRA and will publish a notice of receipt in the **Federal Register** not later than 30 days after FRA's receipt of such petition.

(b) *Bid requirements.* An eligible petitioner that has filed a timely petition under § 269.7 and Amtrak, if Amtrak desires, may file a bid with FRA not later than 120 days after FRA publishes the notice of receipt in the **Federal Register** under paragraph (a) of this section. Each such bid must:

(1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal's compliance with the requirements in § 269.13(b);

(2) Describe how the bidder would operate the route;

(i) This description must include, but is not limited to, an operating plan, a financial plan and, if applicable, any executed agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the bidder.

(ii) In addition, if the bidder intends to generate any revenues from ancillary activities (*i.e.,* activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance, together with the assumptions underlying the estimates of such incremental impacts.

(3) Describe what passenger equipment the bidder would need, including how it would be procured;

(4) Describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments;

(5) Contain a staffing plan describing the number of employees the bidder needs to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid;

(6) Describe the capital needs for the passenger rail service including in detail any costs associated with compliance with Federal law and regulations;

(7) Describe in detail the bidder's plans for meeting all FRA safety requirements, including equipment, employee, and passenger parameters;

(8) Describe, for each Federal fiscal year fully or partially covered by the bid, a projection of the passenger rail service route's total revenue, total costs, total contribution/loss, and net cash used in operating activities per passenger-mile attributable to the route;

(9) Describe how the passenger rail service would meet or exceed the performance required of or achieved by Amtrak on the applicable route during the last fiscal year, and how the bidder would report on the performance standards. At a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid a projection of the route's expected Passenger Miles per Train Mile, End-Point and All Stations On-Time Performance, Host Railroad and Operator Responsible Delays per 10,000 Train Miles, Percentage of Passenger Trips to/from Underserved Communities, Service Interruptions per 10,000 Train Miles due to Equipment-Related Problems, and customer service quality;

(10) Analyze the reasonably foreseeable effects, both positive and negative, of the passenger rail service on other intercity passenger rail services;

(11) Describe the bidder's compliance with all applicable Federal, state, and local laws; and

(12) Provide State or States written concurrence of the bid for a route that receives funding from a State or States.

(c) *Supplemental information.* (1) FRA may request supplemental information from a bidder and/or Amtrak if FRA determines it needs such information to evaluate a bid.

(2) FRA's request may seek information about the costs related to the service that Amtrak would still incur following the cessation of service, including the increased costs for other services.

(3) FRA will establish a deadline by which the bidder and/or Amtrak must file the supplemental information with FRA.

**§ 269.11 Evaluation.**

(a) *Evaluation.* FRA will select a winning bidder by evaluating the bids based on the requirements of this part.

(b) *Notification.* (1) Upon selecting a winning bidder, FRA will publish a notice in the **Federal Register** describing the identity of the winning bidder, the long-distance route the bidder will operate, a detailed justification explaining why FRA selected the bid, and any other information the Administrator determines appropriate.

(2) The notice under this paragraph (b) will be open for public comment for 30 days after the date FRA selects the bid.

**§ 269.13 Award.**

(a) *Award.* FRA will execute a contract with a winning bidder that is not or does not include Amtrak, consistent with the requirements of this section and as FRA may otherwise require, not later than 270 days after the bid deadline established by § 269.9(b).

(b) *Contract requirements.* Among other things, the contract between FRA

and a winning bidder that is not or does not include Amtrak must:

(1) Award to the winning bidder the right and obligation to provide intercity passenger rail transportation over that route subject to such performance standards as FRA may require for a duration consistent with § 269.3(b);

(2) Award to the winning bidder an operating subsidy, as determined by FRA and based on Amtrak's final audited publically-reported fully-allocated operating costs of the route for the prior fiscal year, excluding costs related to Other Postretirement Employee Benefits, Amtrak Performance Tracking System Asset Allocations, Project Related Costs, and Amtrak Office of Inspector General activities, subject to the availability of funding, for the first year at a level that does not exceed 90 percent of the level in effect for that specific route during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation;

(3) State that any award of an operating subsidy is made annually, is subject to the availability of funding, and is based on the amount calculated under paragraph (b)(2) of this section, adjusted for inflation;

(4) Condition the operating and subsidy rights upon the winning bidder providing intercity passenger rail transportation over the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award;

(5) Condition the operating and subsidy rights upon the winning bidder's compliance with performance standards FRA may require, but which, at a minimum, must meet or exceed the performance required of or achieved by Amtrak on the applicable route during the fiscal year immediately preceding the year the bid is submitted;

(6) Subject the winning bidder to the grant conditions established by 49 U.S.C. 24405; and

(7) Subject the winning bidder to the requirements of the appropriations act(s) funding the contract.

(c) *Publication.* The winning bidder shall make their bid available to the public after the bid award with any appropriate redactions for confidential or proprietary information.

**§ 269.15 Access to facilities; employees.**

(a) *Access to facilities.* (1) If the award under § 269.13 is made to an eligible petitioner, Amtrak must provide that eligible petitioner access to the Amtrak-owned reservation system, stations, and facilities directly related to operations of the awarded route(s).

(2) If Amtrak and the eligible petitioner awarded a route cannot agree on the terms of access, either party may petition the Surface Transportation Board under 49 U.S.C. 24711(g).

(b) *Employees.* The employees of any person, except as provided in a collective bargaining agreement, an eligible petitioner uses in the operation of a route under this part shall be considered an employee of that eligible petitioner and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak.

(c) *Hiring preference.* The winning bidder must provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan the winning bidder submits and the grant conditions established by 49 U.S.C. 24405.

**§ 269.17 Cessation of service.**

(a) If an eligible petitioner awarded a route under this part ceases to operate the service or fails to fulfill its obligations under the contract required under § 269.13, the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service and re-bidding the contract to operate the service.

(b) In re-bidding the contract, the entity providing service must either be Amtrak or an eligible petitioner.

Issued in Washington, DC, on July 3, 2017.

**Patrick Warren,**

*Executive Director.*

[FR Doc. 2017–14355 Filed 7–5–17; 4:15 pm]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 170126124–7124–01]**

**RIN 0648–XF488**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2017 Accountability Measure-Based Closures for Commercial and Recreational Species in the U.S. Caribbean off Puerto Rico

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closures.

**SUMMARY:** Through this temporary rule, NMFS implements accountability measures (AMs) for species and species groups in the exclusive economic zone (EEZ) of the U.S. Caribbean off Puerto Rico (Puerto Rico management area) for the 2017 fishing year. NMFS has determined that annual catch limits (ACLs) in the Puerto Rico management area were exceeded for spiny lobster; the commercial sectors of triggerfish and filefish (combined), and Snapper Unit 2; and the recreational sectors of triggerfish and filefish (combined), and jacks, based on average landings during the 2013–2015 fishing years. This temporary rule reduces the lengths of the 2017 fishing seasons for these species and species groups by the amounts necessary to ensure, to the extent practicable, that landings do not exceed the applicable ACLs in 2017. NMFS closes the applicable sectors for these species and species groups beginning on the dates specified in the **DATES** section and continuing until October 1, 2017. These AMs are necessary to protect the Caribbean reef fish and spiny lobster resources in the Puerto Rico management area.

**DATES:** This rule is effective August 7, 2017, until 12:01 a.m., local time, on October 1, 2017. The AM-based closures apply in the Puerto Rico management area for the following species and species groups, and fishing sectors, at the times and dates specified below, until 12:01 a.m., local time, on October 1, 2017.

- Triggerfish and filefish, combined (commercial) effective at 12:01 a.m., local time, on August 13, 2017;
- Spiny lobster (commercial and recreational) effective at 12:01 a.m., local time, on September 7, 2017;
- Snapper Unit 2 (commercial) effective at 12:01 a.m., local time, on September 15, 2017;
- Triggerfish and filefish, combined (recreational) effective at 12:01 a.m., local time, on September 18, 2017;
- Jacks (recreational) effective at 12:01 a.m., local time, on September 28, 2017.

**FOR FURTHER INFORMATION CONTACT:** María del Mar López, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *maria.lopez@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Caribbean EEZ includes triggerfish and filefish, snappers in Snapper Unit 2, and jacks, and is managed under the Fishery Management Plan (FMP) for the Reef

Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP). Caribbean spiny lobster is managed under the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP). The FMPs were prepared by the Caribbean Fishery Management Council (Council) and are 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 2010 Caribbean ACL Amendment (which includes, along with another amendment, Amendment 5 to the Reef Fish FMP) and the 2011 Caribbean ACL Amendment (which includes, among other amendments, Amendment 6 to the Reef Fish FMP and Amendment 5 to the Spiny Lobster FMP) revised the Reef Fish and Spiny Lobster FMPs. Among other actions, the 2010 and 2011 Caribbean ACL Amendments and the associated final rules (76 FR 82404, December 30, 2011, and 76 FR 82414, December 30, 2011, respectively) established ACLs and AMs for Caribbean reef fish and spiny lobster, including the species and species groups identified in this temporary rule. The 2010 and 2011 Caribbean ACL Amendments and final rules also allocated ACLs among three Caribbean island management areas, *i.e.,* the Puerto Rico, St. Croix, and St. Thomas/St. John management areas of the Caribbean EEZ, as specified in Appendix E to part 622. The ACLs for species and species groups in the Puerto Rico management area, except for spiny lobster, were further allocated between the commercial and recreational sectors, and AMs apply to each of these sectors separately.

On May 11, 2016, NMFS published the final rule implementing the Comprehensive Amendment to the U.S. Caribbean FMPs: Application of AMs (81 FR 29166). Among other items, the final rule clarified that the spiny lobster ACL for the Puerto Rico management area is applied as a single ACL for both the commercial and recreational sectors, consistent with the Council's intent in the 2011 Caribbean ACL Amendment, and the AM applies to both sectors. Additionally, the final rule clarified the fishing restrictions that occur in the Caribbean EEZ when an ACL is exceeded, and an AM is triggered and implemented. The Puerto Rico management area encompasses the EEZ off Puerto Rico.

In addition, on June 8, 2017, NMFS implemented the final rule for Amendment 8 to the Reef Fish FMP, Amendment 7 to the Spiny Lobster FMP, and Amendment 6 to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (collectively referred to as the AM Timing Amendment) (82 FR 21475, May 9, 2017). The final rule implementing the AM Timing Amendment modified the date for initiating an AM-based closure in the event of an ACL overage for the species and species groups managed by the Council under the aforementioned FMPs. Instead of initiating an AM-based closure on December 31 and counting backward into the year for the number of days necessary to achieve the reduction in landings required so landings do not exceed the applicable ACL, the AM-based closure period will be applied on September 30 and count backward toward the beginning of the fishing year.

The ACLs for the applicable species and species groups, and fishing sectors in the Puerto Rico management area covered by this temporary rule are as follows and are given in round weight:

- The commercial ACL for triggerfish and filefish, combined, is 58,475 lb (26,524 kg), as specified in § 622.12(a)(1)(i)(Q).
- The ACL for spiny lobster (applicable to the commercial and recreational sectors) is 327,920 lb (148,742 kg), as specified in § 622.12(a)(1)(iii).
- The commercial ACL for Snapper Unit 2 is 145,916 lb (66,186 kg), as specified in § 622.12(a)(1)(i)(D).
- The recreational ACL for triggerfish and filefish, combined, is 21,929 lb (9,947 kg), as specified in § 622.12(a)(1)(ii)(Q).
- The recreational ACL for jacks is 51,001 lb (23,134 kg), as specified in § 622.12(a)(1)(ii)(M).

NMFS has determined that landings for the species and species groups in this temporary rule from the Puerto Rico management area exceeded the applicable ACLs. Therefore, in accordance with regulations at 50 CFR 622.12(a), the Assistant Administrator for NOAA Fisheries (AA) is filing a notification with the Office of the Federal Register to reduce the lengths of the fishing seasons for the applicable species or species groups in the 2017 fishing year by the amount necessary to ensure, to the extent practicable, that landings do not exceed the applicable ACLs. As described in the Reef Fish and Spiny Lobster FMPs, and in this temporary rule, any required fishing season reduction will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year on December 31. NMFS evaluates landings relative to the applicable ACL based on a moving 3-year average of landings, as described in the FMPs.

Based on the most recent available landings data, from the 2013–2015 fishing years, NMFS has determined that the ACLs for spiny lobster; the commercial sectors for triggerfish and filefish (combined), and Snapper Unit 2; and the recreational sectors of triggerfish and filefish (combined), and jacks in the Puerto Rico management area have been exceeded. In addition, NMFS has determined that the ACLs for these species and species groups were exceeded because of increased catches and not as a result of enhanced data collection and monitoring efforts.

This temporary rule implements AMs for the identified commercial and recreational sectors for the species and species groups listed in this temporary rule, to reduce the respective 2017 fishing season lengths to ensure that landings do not exceed the applicable ACLs in the 2017 fishing year. The 2017 fishing seasons for the applicable sectors for these species and species groups in the Puerto Rico management area of the Caribbean EEZ are closed at the times and dates listed below. These closures remain in effect until 12:01 a.m., local time, on October 1, 2017.

- The commercial sector for triggerfish and filefish, combined, is closed effective at 12:01 a.m., local time, on August 13, 2017. Triggerfish and filefish, combined, includes ocean, queen, and sargassum triggerfish; scrawled and whitespotted filefish; and black durgon;
- The commercial and recreational sectors for spiny lobster are closed effective at 12:01 a.m., local time, on September 7, 2017;
- The commercial sector for Snapper Unit 2 is closed effective at 12:01 a.m., local time, on September 15, 2017. Snapper Unit 2 includes queen and cardinal snapper;
- The recreational sector for triggerfish and filefish, combined, is closed effective at 12:01 a.m., local time, on September 18, 2017. Triggerfish and filefish, combined, includes ocean, queen, and sargassum triggerfish; scrawled and whitespotted filefish; and black durgon; and
- The recreational sector for jacks is closed effective at 12:01 a.m., local time, on September 28, 2017. Jacks includes horse-eye, black, almaco, bar, and yellow jack; greater amberjack; and blue runner.

After these specified closures, on October 1, 2017, these applicable species and species groups will reopen through December 31, 2017, the end of the current fishing year.

During the Puerto Rico commercial sector closures announced in this temporary rule for the species above, except for spiny lobster, which is described below, the commercial harvest of the indicated species or species groups is prohibited. All harvest or possession of the indicated species or species groups in or from the Puerto Rico management area is limited to the recreational bag and possession limits specified in § 622.437, unless the recreational sector for the species or species group is closed, and the sale or purchase of the indicated species or species group in or from the Puerto Rico management area is prohibited.

During the Puerto Rico recreational sector closures announced in this temporary rule for the species above, except for spiny lobster, which is described below, all recreational harvest of the indicated species groups is prohibited, and the recreational bag and possession limits for the indicated species groups in or from the Puerto Rico management area are zero.

During the Puerto Rico spiny lobster closure announced in this temporary rule, both the commercial and recreational sectors for spiny lobster are closed. The harvest, possession, purchase, or sale of spiny lobster in or from the Puerto Rico management area is prohibited. The bag and possession limits for spiny lobster in or from the Puerto Rico management area are zero.

**Classification**

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of the species and species groups included in this temporary rule, in the Puerto Rico management area, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.12(a) 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 AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rules implementing the ACLs and AMs for these species and species groups have been subject to notice and comment, and all that remains is to notify the public that the ACLs were exceeded and that the AMs are being implemented for the 2017 fishing year. Prior notice and opportunity for public comment on this action would be contrary to the public interest because many of those affected by the length of the commercial and recreational fishing seasons, including commercial operations, and charter vessel and headboat operations that book trips for clients in advance, need advance notice to adjust their business plans to account for the reduced commercial and recreational fishing seasons.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2017.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–14293 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 170314268–7582–0]**

**RIN 0648–BG68**

## Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder and Scup Fisheries; Fishing Year 2017

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this rule, NMFS implements management measures for the 2017 summer flounder and scup recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year. The intent of these measures is to constrain recreational catch to established limits and prevent overfishing of the summer flounder and scup resources.

**DATES:** This rule is effective July 7, 2017. The management measures for the 2017 summer flounder and scup recreational fisheries are effective July 7, 2017, through December 31, 2017.

**ADDRESSES:** Copies of the Supplemental Information Report (SIR) and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298.

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, (978) 281–9244.

**SUPPLEMENTARY INFORMATION:**

**Summary of Final Management Measures**

In this rule, NMFS specifies management measures for the 2017 summer flounder and scup recreational fisheries consistent with the recommendations of the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission.

NMFS is implementing measures that apply in the Federal waters of the exclusive economic zone. These measures apply to all federally-permitted party/charter vessels with applicable summer flounder and scup permits, regardless of where they fish, unless the state in which they land implements measures that are more restrictive. These measures are intended to achieve, but not exceed, the previously established 2017 recreational harvest limits for scup published on December 28, 2015 (80 FR 80689), and for summer flounder published on December 22, 2016 (81 FR 93842).

*Summer Flounder Recreational Management Measures*

NMFS is implementing conservation equivalency to manage the 2017 summer flounder recreational fishery, as proposed on April 19, 2017 (82 FR 18411). These measures are consistent with the recommendation of the Council and Commission. Additional information on the development of the 2017 measures is provided in the proposed rule and not repeated here.

Conservation equivalency, as established by Framework Adjustment 2 (July 29, 2001; 66 FR 36208), allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit established by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. Framework Adjustment 6 (July 26, 2006; 71 FR 42315) allowed states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

The Commission implemented Addendum XXVIII to its Summer Flounder Fishery Management Plan (FMP) to continue regional conservation equivalency for fishing year 2017. The Commission has adopted the following regions, which are consistent with the 2016 regions: (1) Massachusetts; (2) Rhode Island; (3) Connecticut and New York; (4) New Jersey; (5) Delaware, Maryland, and Virginia; and (6) North Carolina. To provide the maximum amount of flexibility and to address the state-by-state differences in fish availability, each state in a region is required by the Council and Commission to establish fishing seasons of the same length, with identical minimum fish sizes and possession limits. Addendum XXVIII requires each state or region, with the exception of North Carolina, to increase the 2017 summer flounder minimum size by 1 inch (2.5 cm) from the 2016 size limit. The 2017 measures also reduce the bag limit for most of the states and regions, while the season length remains the same as in 2016. More information on this addendum is available from the Commission (*www.asmfc.org*).

The Commission certified, by letter dated April 5, 2017, that the Addendum XXVIII measures required to be implemented by individual states and regions, when combined, are the conservation equivalent of coastwide measures that would be expected to result in the 2017 recreational harvest limit being achieved, but not exceeded.

Following this determination, New Jersey proposed and subsequently implemented on May 25, 2017, alternative measures for its state waters (*i.e.,* 18-inch (45.7-cm) fish size, 3-fish bag limit, and a 104-day season). The Summer Flounder Management Board requested these measures be reviewed by the Commission's Technical Committee when they were proposed. The Technical Committee found New Jersey's measures are not the conservation equivalent of Addendum XXVIII measures. Using the Technical Committee's information, the Management Board found that New Jersey's measures were not conservationally equivalent to Addendum XXVIII and recommended New Jersey be found out of compliance with the Commission's FMP. The Commission's Interstate Fisheries Management Policy Board and Commission as a whole met on June 1, 2017, to consider the Management Board's non-compliance recommendation for the state of New Jersey. Both the Policy Board and the Commission found New Jersey out of compliance with the Commission's FMP for summer flounder. The Commission has referred the matter to NMFS under delegation of authority from the Secretary of Commerce, for federal non-compliance review under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act. NMFS will review the Commission's non-compliance referral through a separate process.

Based on the April 5, 2017, recommendation of the Commission, we find that the recreational summer flounder fishing measures required to be implemented for 2017 in state waters are, collectively, the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a). According to § 648.107(a)(1), vessels subject to the recreational fishing measures are not subject to Federal measures, and instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended through this rule to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2016. As mentioned above, New Jersey has not implemented Addendum XXVIII's required measures. NMFS' review and findings regarding the non-compliance recommendation for New Jersey will begin with publishing a notice in the **Federal Register**.

In addition, this action implements default coastwide measures (a 19-inch (48.3-cm) minimum size, 4-fish possession limit, and June 1 through September 15 open fishing season), that become effective January 1, 2018, when the 2017 conservation equivalency program expires. These measures will remain effective until replaced by the 2018 recreational management measures in the spring of next year.

**Scup Recreational Management Measures**

This rule maintains status quo scup measures for the 2017 fishery: A 9-inch (22.9-cm) minimum fish size, 50-fish per person possession limit, and year-round season.

**Comments and Responses**

On April 19, 2017, NMFS published the proposed 2017 summer flounder and scup recreational management measures for public notice and comments. NMFS received 17 comments, of which 14 were related to measures provided in the proposed rule. New Jersey submitted a comment letter focused on their dissatisfaction with the specific measures outlined in Addendum XXVIII. New Jersey's concerns will be considered through the non-compliance proceedings and are not responded to in this action. Other comments received related to preferences for lower quotas for summer flounder and scup, as well as opinions that the Council favors the commercial industry.

No changes to the proposed specifications were made as a result of these comments.

*Comment 1:* One commenter from the State of Rhode Island stated that the measures contained within Addendum XXVIII were not restrictive enough to constrain catch within the 2017 summer flounder harvest limit. The commenter noted concern that more restrictive measures proposed by the State of Rhode Island were rejected by the Commission's Management Board.

*Response:* The Commission and its Technical Committee has expertise in determining whether or not state-implemented measures are conservationally equivalent to those measures recommended by the Council. The Commission has determined that the addendum's measures achieve conservation equivalency and are likely to constrain catch within the 2017 recreational harvest limit.

*Comment 2:* Eleven commenters raised concerns about state-specific summer flounder regulations which are outside the scope of this action, each specifically requesting that the State of Delaware not be penalized for anything that results from New Jersey's public opposition to the Commission's Addendum.

*Response:* As previously mentioned, the non-compliance determination process for New Jersey will happen outside of this action. Delaware has implemented measures outlined in the Commission's Addendum XXVIII. No further action is required by the State of Delaware for 2017.

*Comment 3:* One commenter was concerned about the summer flounder precautionary default season, stating that he would prefer the season to begin in May, rather than July.

*Response:* Because the Commission did not request that the precautionary default measures be applied to any state, these measures are not applicable for 2017. Instead, this rule implements the Commission and Council recommended measures, as previously proposed, for conservation equivalency in 2017. The coastwide default measures will be effective to the start of the 2018 fishing year.

**Classification**

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final management measures are in place as soon as possible. A delay in this rule's effectiveness would unfairly prejudice federally permitted charter/party vessels. Recreational fisheries are already underway for summer flounder and scup. The linchpin of NMFS's decision whether to proceed with the coastwide measures or adopt the conservation equivalent measures is advice from the Commission following review of the individual state plans. Rulemaking has been delayed while final information regarding the status of New Jersey through the Commission's conservation equivalency process has been evaluated. The Commission's Summer Flounder Management Board met on June 1, 2017, to discuss whether or not to find New Jersey out of compliance with Addendum XXVIII. NMFS did not want to cause public confusion by releasing a final rule prior to the Commission's final determination on New Jersey's summer flounder management measures.

Based on historic effort and landings information, and the importance of summer flounder as a recreational fishery target species, participation and landings are expected to be high from the onset of the fishery that is already underway. Party and charter vessels from the various states are the largest component of the recreational fishery that fish in the EEZ. The Federal coastwide regulatory measures for summer flounder that were codified last year remain in effect until the 2017 recreational measures are made effective. These measures do not achieve the necessary reduction in recreational landings to constrain the fishery to the 2017 recreational harvest limit. Although the states' summer flounder fisheries are already open, additional delay in implementing the measures of this rule will increase confusion on what measures are in place in Federal waters. This will disadvantage Federally permitted charter/party vessels and increase the likelihood of illegal landings due to misunderstood regulations. The resulting disconnect in the regulations that exist until this rule's measures are implemented may potentially compromise the mortality objectives of the summer flounder fishery.

Unlike actions that require an adjustment period to comply with new rules, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the published management measures for each relevant species of fish while the charter/party operators are engaged in fishing activities.

For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay and to implement this rule upon publication in the **Federal Register**.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of any significant issues raised by the public comments in response to the IRFA and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the SIR/IRFA is available from the Council (see **ADDRESSES**).

The classification to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

**Final Regulatory Flexibility Analysis**

*A Summary of Significant Issues Raised by the Public in Response to the Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result*

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action, can be found in the Comments and Responses section of this rule. Aside from the comment from the State of New Jersey that will be considered through a separate process, none of the comments received raised specific issues regarding the economic analyses summarized in the IRFA. No changes to the proposed rule were required to be made as a result of public comments.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

Available ownership data for the for-hire fleet indicate that there were 411 for-hire affiliate firms generating revenues from fishing recreationally for various species during the 2013–2015 period, all of which are categorized as small businesses. Although it is not possible to derive what proportion of the overall revenues came from specific fishing activities, given the popularity of summer flounder and scup as a recreational species, it is likely that revenues generated from summer flounder and scup recreational fishing are important for some, if not all, of these firms. The three-year average (2013–2015) gross receipts for these small entities ranged from $10,000 for 121 entities to over $1 million for 10 entities (highest value was $2.7 million).

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes*

In seeking to minimize the impact of recreational management measures (minimum fish size, possession limit, and fishing season) on small entities (*i.e.,* Federal party/charter permit holders), NMFS is constrained to implementing measures that meet the conservation objectives of the FMP and Magnuson-Stevens Act requirements. The only other summer flounder management measure alternative considered was the less restrictive status quo alternative (*i.e.,* the non-preferred coastwide 2016 measures). State-specific implications of the no-action (coastwide) alternative of an 18-inch (45.7-cm) minimum fish size, a 4-fish bag limit, and closed season of May 1 through September 30, would not achieve the mortality objectives required by the FMP, and, therefore,

cannot be continued for the 2017 fishing season.

The conservation equivalency approach implemented by this action allows states some degree of flexibility in the specification of management measures, unlike the application of one set of uniform coastwide measures. The degree of flexibility available to states under conservation equivalency is constrained to a combined suite of minimum fish size, per angler possession limit, and fishing season that will likely constrain catch to the 2017 recreational harvest limit. This provides the opportunity for states to construct measures that achieve the conservation objective while providing a state-specific set of measures in lieu of the one-size-fits-all coastwide measure.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal party/charter permits issued for the summer flounder and scup fisheries. In addition, copies of this final rule and guide (*i.e.,* permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following Web site: *http://www.greateratlantic.fisheries.noaa.gov.*

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 3, 2017.

**Chris Oliver,**

*Assistant Administrator for Fisheries, National Marine Fisheries Services.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.104, paragraph (b) is revised to read as follows:

**§ 648.104 Summer flounder minimum fish sizes.**

* * * * *

(b) *Party/charter permitted vessels and recreational fishery participants.* Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19 inches (48.3 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

■ 3. Section 648.105 is revised to read as follows:

**§ 648.105 Summer flounder recreational fishing season.**

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3), and fishermen subject to the possession limit, may fish for summer flounder from June 1 through September 15. This time period may be adjusted pursuant to the procedures in § 648.102.

■ 4. In § 648.106, paragraph (a) is revised to read as follows:

**§ 648.106 Summer flounder possession restrictions.**

(a) *Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, per trip unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

* * * * *

■ 5. In § 648.107, introductory text to paragraph (a) and paragraph (b) are revised to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder fishery.**

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2017 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b), and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—July 1 through August 31; minimum size—20 inches (50.8 cm); and possession limit—two fish.

[FR Doc. 2017–14280 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 160808696–7010–02]**

**RIN 0648–BG95**

## Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2017–2018 Biennial Specifications and Management Measures; Inseason Adjustments

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures.

**SUMMARY:** This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), is intended to allow fisheries to access more abundant

groundfish stocks while protecting overfished and depleted stocks.

**DATES:** This final rule is effective July 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Karen Palmigiano, phone: 206–526–4491, fax: 206–526–6736, or email: *karen.palmigiano@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

**Background**

The PCGFMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

The final rule to implement the 2017–2018 harvest specifications and management measures for most species of the Pacific coast groundfish fishery was published on February 7, 2017 (82 FR 9634).

The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended three changes to current groundfish management measures at its June 9–14, 2017 meeting. The changes the Council recommended include: (1) Increasing the limited entry (LE) and open access (OA) fixed gear trip limits for lingcod both north and south of 40°10′ North latitude (N. lat.), (2) modifying the shoreward boundary of the non-trawl rockfish conservation area (RCA) between 40°10′ N. lat. and 34°27′ N. lat., and (3) distributing the deductions initially made from the ACL (*i.e.* the off-the-top deductions, or ''buffer''), 25 metric tons (mt) of Pacific ocean perch (POP) and 50 mt of darkblotched rockfish, and making it available to the mothership (MS) and catcher/processor (C/P) sectors of the at-sea Pacific whiting fishery; 12.5 mt of POP and 25 mt of darkblotched rockfish, to each sector.

*Fishery Management Measures for Lingcod LE and OA Fixed Gear North and South of 40°10′ N. lat.*

To increase harvest opportunities for LE and OA fixed gear sectors north and south of 40°10′ N. lat., the Council considered increases to lingcod trip limits for all remaining periods in 2017. Trip limits for lingcod north and south of 40°10′ N. lat. have been designated at 50 CFR 660.60(c)(1)(i) and in Section 6.2.1 of the PCGFMP as routine management measures.

Lingcod are distributed coastwide with harvest specifications based on two area stock assessments that were conducted in 2009 for the areas north and south of the California-Oregon border at 42° N. latitude. The stock assessments indicated west coast lingcod stocks are healthy with the stock depletion estimated for lingcod off of Washington and Oregon to be at 62 percent of its unfished biomass, and lingcod off of California estimated to be at 74 percent of its unfished biomass at the start of 2009. Trip limit increases, for species such as lingcod, are intended to reduce discarding (*i.e.,* turn discards into landed catch and thereby improve catch accounting) and increase attainment of the non-trawl harvest guideline (HG). This change may result in a small increase in the catch of some overfished species, such as yelloweye rockfish, but such an increase is very unlikely to result in exceeding overfished species ACLs when combined with the harvest from all other sources.

To assist the Council in evaluating increases to lingcod trip limits, the Groundfish Management Team (GMT) made model-based landings projections for the LE and OA fixed gear sector for north and south of 40°10′ N. lat. for the remainder of the year. For these projections, the GMT included four recent updates to the discard mortality rates used by the West Coast Groundfish Observer Program (WCGOP) to estimate discard mortality each year and, by the GMT, in the nearshore model to project future discard mortality. The updates included: (1) Updating the gear proportions by depth with recent data; (2) calculating regional discard mortality rates to match the WCGOP estimate strata (*i.e.* north and south of 40°10′ N. lat.); (3) utilizing the Council approved changes to the ''sport-like'' surface discard mortality rates; and (4) incorporating a bias modifier to calibrate the gear proportions from WCGOP (a sub-sample of landings to reflect the gear proportions from fish tickets in the Pacific Fishery Information Network (PacFIN)). These landings projections also were based on the most recent information available.

The model, using the new discard mortality rates, predicted a projected harvest of 71.2 mt, or 4.2 percent attainment of the 2017 non-trawl allocation (1,680 mt), of lingcod north of 40°10′ N. lat. for both OA and LE fixed gear under the current trip limits, and an increase in projected harvest to 75 mt, or 4.4 percent attainment of the non-trawl allocation, of lingcod north of 40°10′ N. lat. for both OA and LE fixed gear under the recommended increased trip limits. The model also predicted a projected harvest of 91.8 mt, or 13 percent attainment of the non-trawl allocation (683 mt), of lingcod south of 40°10′ N. lat. for both OA and LE fixed gear under the current trip limits, and an increase in projected harvest to 133.8 mt, or 19.6 percent attainment of the non-trawl allocation, of lingcod south of 40°10′ N. lat. for both OA and LE fixed gear under the recommended increased trip limits. Using the updated discard mortality rates, the model also predicted that under the current regulations harvest of yelloweye rockfish through the end of the year would be 0.7 mt lower (1.4 mt out of a 2.1 mt HG) than was anticipated at the start of this year.

Yelloweye rockfish is an overfished species currently managed under a rebuilding plan. The projected impacts to yelloweye rockfish would increase under the increased trip limits for lingcod. Based on the GMT's analysis, the changes to the trip limits north of 40°10′ N. lat. are projected to result in an increase in lingcod landings through the end of the year of approximately 3.8 mt and a projected increase in yelloweye rockfish discard mortality of 0.06 mt. The same GMT analysis showed that an increase in trip limits for lingcod south of 40°10′ N. lat. would result in an increase in projected lingcod landings through the end of the year of 55 mt and an increase in yelloweye rockfish discard mortality of 0.21 mt. This increase in trip limits, and subsequent increase in lingcod landings, does not change total projected impacts to co-occurring overfished species from those anticipated in the 2017–18 harvest specifications and management measures, as the total projected impacts for those species assumes that the entire lingcod ACL is harvested.

Therefore, the Council recommended and NMFS is implementing, by modifying Tables 2 (North and South) to part 660, subpart E and Tables 3 (North and South) to part 660, subpart F in the CFR, trip limit changes for the LE and OA fixed gear fisheries north and south of 40°10′ N. lat. The trip limits for lingcod in the LE fixed gear fishery north of 40°10′ N. lat. are increased from ''1,200 lb (544 kg) bimonthly'' to ''1,400 lb (635 kg) bimonthly'' during periods 4 through 5; from ''600 lb (272 kg) per month'' to ''700 lb (318 kg) bimonthly'' during the month of November; and

from ''200 lb (91 kg) per month'' to ''400 lb (181 kg) bimonthly'' during the month of December. The trip limits for lingcod in the LE fixed gear fishery south of 40°10′ N. lat. are increased from ''800 lb (363 kg) bimonthly'' to ''1,200 lb (544 kg) bimonthly'' during periods 4 through 5; from ''400 lb (181 kg) bimonthly'' to ''600 lb (272 kg) per month'' during the month of November; and from ''200 lb (91 kg) per month'' to ''300 lb (136 kg) bimonthly'' during the month of December.

The trip limits for lingcod in the OA fixed gear fishery north of 40°10′ N. lat. are increased from ''600 lb (272 kg) per month'' to ''700 lb (318 kg) per month'' during periods 4 through 5 and during the month of November; and from ''100 lb (45 kg) per month'' to ''200 lb (181 kg) per month'' during the month of December. The trip limits for lingcod in the OA fixed gear fishery south of 40°10′ N. lat. are increased from ''400 lb (181 kg) per month'' to ''600 lb (272 kg) per month'' during periods 3 through 5; and are increased from ''100 lb (45 kg) per month'' to ''150 lb (68 kg) per month'' during the month of December.

For the OA fixed gear fishery south of 40°10′ N. lat., the Council recommended a ''200 lb (91 kg) per month'' trip limit for lingcod during the month of November, which is lower than the current lingcod trip limit for November in the OA fixed gear fishery south of 40°10′ N. lat. at ''400 lb (181 kg) per month.'' The Council recommended trip limit was based on an error in the GMT report and is inconsistent with the report's analysis of the estimated impacts, which analyzed a ''600 lb per month'' trip limit for lingcod during the month of November. NMFS understands the Council intent with the recommendations for changes to lingcod trip limits was to increase trip limits from what is currently in regulation to provide additional access and harvest a greater proportion of the lingcod ACL. It was not the Council's intent to reduce harvesting opportunities by reducing the OA fixed gear lingcod trip limits north of 40°10′ N. lat. for the month of November from 400 lb to 200 lb. Therefore, NMFS is not implementing the lower November trip limit for lingcod (200 lb (91 kg) per month) in the OA fixed gear fishery south of 40°10′ N. lat. for the month of November, and the trip limit for that month will remain at ''400 lb (181 kg) per month.'' This trip limit during the month of November would reduce the projected lingcod impacts from those presented to the Council (146.7 mt) to 133.8 mt.

*Fishery Management Measures for the Non-Trawl RCA between 40°10′ N. lat. and 34°27′ N. lat.*

The non-trawl RCA applies to vessels that take, retain, possess, or land groundfish using non-trawl gears, unless they are incidental fisheries that are exempt from the non-trawl RCA (*e.g.* the pink shrimp non-groundfish trawl fishery). The seaward and shoreward boundaries of the non-trawl RCAs vary along the coast, and are divided at various commonly used geographic coordinates, defined in § 660.11, subpart C. Modifications to RCAs are designated as a routine management measure in § 660.60(c)(3)(i) and section 6.2.1 of the PCGFMP.

RCAs were originally established in the early 2000s to protect bocaccio and canary rockfishes which had recently been declared overfished.[1] These large area closures were intended to close off areas to fishing in the main portion of the species' depth range to reduce encounters and subsequent mortality. At that same time, conservative trip limits, including no retention, were implemented to further reduce catches and overall mortality, and ensure the stocks would rebuild more quickly. Unfortunately, implementing RCAs also greatly reduced access to many healthy target stocks which were found in similar depths to overfished species. As a result, an important shelf rockfish fishery which used to operate south of 40°10′ N lat. was severely impacted.

In 2009, the shoreward boundary of the non-trawl RCA was established based on fishery information indicating that fishing in some areas in the non-trawl fishery have higher yelloweye rockfish catch rates than in others, and the RCA boundaries were adjusted to reduce mortality of yelloweye rockfish in these areas.

Between 40°10′ N. lat. and 34°27′ N. lat., the non-trawl RCA is currently defined by the boundary lines approximating the 30 fm and 125 fm depth contours. All fishing with non-trawl gear must occur shoreward of the boundary line approximating the 30 fm depth contour, or seaward of the boundary line approximating the 125 fm depth contour. Changes to the non-trawl RCA shoreward boundary between 40°10′ N. lat. and 34°27′ N. lat., to shift the shoreward boundary deeper and open additional fishing area shoreward of the non-trawl RCA, were previously recommended by the California Department of Fish and Wildlife (CDFW) during the 2017–18 Harvest Specifications and Management Measures process. The Council did not ultimately recommend a boundary line change, at that time, due to the increased yelloweye rockfish projected impacts when fishing was opened in those areas.

The GMT's recent updates to the discard mortality rates—discussed further under the preamble subheading *Fishery Management Measures for Lingcod LE and OA Fixed Gear North and South of 40°10′ N. lat.*—resulted in projected impacts to yelloweye rockfish through the end of the year that were lower than anticipated during the development of the 2017–18 harvest specifications and management measures. The Council has recommended modifying the shoreward non-trawl RCA boundary from the boundary line approximating the 30 fm depth contour to the boundary line approximating the 40 fm depth contour in the area from 40°10′ N. lat., and 34°27′ N. lat. The change to the non-trawl RCA shoreward boundary line in this area opens areas that have been closed since 2009, and may increase fishing efficiency and reduce gear conflicts by spreading the nearshore fleet over a larger fishing area. Opening this area is anticipated to increase overall landings of both target and non-target groundfish species, but mortality is anticipated to remain below the allocations or harvest limits for all species.

Modifying the shoreward boundary of the non-trawl RCA in this area would provide harvest opportunities for many important target stocks, specifically deeper nearshore rockfish (blue, brown, copper, and olive rockfishes) and shelf rockfish species (chilipepper, greenblotched, Mexican, and vermilion rockfishes). Non-trawl harvest of groundfish is managed with cumulative trip limits, and any increased attainment is expected to remain within allowable harvest limits. Relatively small impacts to canary, bocaccio, and yelloweye rockfish are expected. All projected bocaccio and canary rockfish impacts would remain within the nearshore fishery share of the non-trawl allocations for those species.

The GMT presented an updated analysis to the Council regarding the projected yelloweye rockfish impacts from modifying the shoreward boundary of the non-trawl RCA. The GMT assumed that effort would remain unchanged within the 0 fm to 10 fm depth bin, and all remaining effort would shift into deeper water (30 to 40 fm depth bin) when the boundary was modified. Yelloweye rockfish is an overfished species that is encountered primarily north of 40°10′ N. lat. Few

[1] Both canary rockfish and bocaccio were declared rebuilt in 2015 and 2017, respectively.

encounters occur south of 40°10′ N. lat., and no encounters occur south of 34°27′ N. lat. While some encounters may occur from modifying the non-trawl RCA shoreward boundary, they are expected to be rare. Projected impacts of yelloweye rockfish through the end of the year, including impacts of the increased lingcod trip limits discussed above, are within California's nearshore yelloweye rockfish HG share of 0.7 mt. Based on the GMT's projections, the expected increase in yelloweye rockfish impacts is 0.15 mt from what was projected to occur in the absence of the inseason adjustments to management measures implemented in this action.

Therefore, based on the new information available regarding the discard mortality of yellow-eye rockfish, the Council recommended and NMFS is adjusting the shoreward boundary of the non-trawl RCA between 40°10′ N lat. and 34°27′ N. lat., by modifying Table 2 (South) to part 660, subpart E and Table 3 (South) to part 660, subpart F in the CFR, so that the boundary lines approximating the 40 fm and 125 fm depth contours, in this area, will define the non-trawl RCA in this area.

*Transferring POP and Darkblotched Rockfish to the MS and C/P Sectors*

As part of the biennial harvest specifications and management measures process, annual ACLs are set for non-whiting groundfish species, deductions are made ''off-the-top'' from the ACL for various sources of mortality (including non-groundfish fisheries that catch groundfish incidentally, also called incidental open access fisheries) and the remainder, the fishery HG, is allocated among the groundfish fisheries. Regulations at § 660.60(c)(3)(ii) allow NMFS to distribute these ''off-the-top'' deductions from the ACL to any sector through routine inseason action to make fish that would otherwise go unharvested available to other fisheries during the fishery year, and after the Council has made the appropriate considerations. Also consistent with section 6.5.2 of the PCGFMP, NMFS has the authority to implement management measures to reduce bycatch of non-groundfish species and, under certain circumstances, the measures may be implemented inseason. However, under no circumstances may the intention of such management measures be simply to provide more fish to a different user group or to achieve other allocation objectives. Therefore, distribution of POP and darkblocked rockfish to the at-sea sectors meets the criteria specified in regulation at § 660.60(c)(3)(ii) and the PCGFMP for a routine management measure.

During development of the 2017–18 harvest specifications and management measures, the Council recommended, and NMFS implemented, a new category of ''off-the-top'' deduction, known as a ''buffer'' (81 FR 75266). The buffer consists of an amount of yield that is deducted from the ACLs for canary and darkblotched rockfish, and POP, as described at § 660.55(b) and specified in the footnotes to Tables 1a and 2a to subpart C. This new management measure set the fishery HG at an amount after the buffer was subtracted from the ACL. The result was a specific amount of yield for each of the three species (25 mt for POP, 50 mt for darkblotched rockfish, and 188 mt for canary rockfish) that was unallocated at the start of the year, but is held in reserve as a buffer, and can be distributed to fisheries in need after an unforeseen catch event occurs inseason. Distribution of the buffer must go to a sector that has demonstrated a need for receiving such a distribution and not for the sole purpose of extending a fishery before a need is demonstrated. Additionally, under the buffer approach, all sectors received a lower allocation of darkblotched rockfish and POP in 2017 than they would have if the entire ACL was allocated; thereby, creating a potential for foregone yield by most sectors. However, foregone yield is expected to be inconsequential because historic attainment of these species has been low, with an average attainment from 2011–2014 of 41 percent of the darkblotched rockfish ACLs and 35 percent of the POP ACLs.

Pacific whiting fisheries encounter Klamath River Chinook salmon incidentally, particularly when fishing off the central and southern Oregon coast. At its March 2017 meeting, the Council received the most recent projections of salmon stock status (Preseason Report I) and considered that Klamath River Chinook will not meet escapement goals for 2017 by a historically large margin. At its April 2017 meeting, the Council recommended complete closure of commercial salmon fisheries off southern Oregon and northern California (approximately 44° N. lat. to 40°10′ N. lat.) and closure of recreational salmon fisheries in similar areas (approximately 42°45′ N. lat. to 40°10′ N. lat.) to protect Klamath River Chinook salmon.

Chinook salmon bycatch in the Pacific whiting fishery varies by latitude, with 81 percent of Chinook being taken when fishing between Cape Falcon (45°46′ N. lat.) and Cape Blanco (42°50′ N. lat.). This is a similar area in which Klamath River Chinook stocks are commonly encountered, where all commercial and recreational salmon fishing in 2017 is closed. At-sea processing of Pacific whiting is currently prohibited south of 42° N. lat. (the Oregon-California border) per regulations at § 660.131(e). Both the MS and C/P sectors expressed willingness at the April 2017 Council meeting to modify operations to avoid Chinook salmon bycatch, but acknowledged that difficulties were likely given their rockfish allocations and historically high Pacific whiting allocations. While moving harvesting operations north to Washington and northern Oregon has likely reduced impacts of the Pacific whiting fishery on Klamath River Chinook, catch of POP in the Pacific whiting fisheries has traditionally been highest when fishing off Washington.

The limited availability of overfished species that can be taken as incidental catch in the Pacific whiting fisheries, particularly darkblotched rockfish and POP, led NMFS to implement sector-specific allocations for these species to the Pacific whiting fisheries. If the sector-specific allocation for a non-whiting species is reached, NMFS may close one or more of the at-sea sectors automatically, per regulations at § 660.60(d). At the start of 2017, the MS and C/P sectors of the Pacific whiting fishery were allocated 9.0 mt and 12.7 mt of POP, respectively, per regulations at § 660.55(c)(1)(i)(B).

At the Council's April meeting, the MS sector requested an increase to their POP set-aside to accommodate northern movement of the fleet to reduce harvest of Klamath River Chinook and to prevent closure of the MS sector prior to harvesting their full allocation of Pacific whiting. To accommodate movement of the at-sea fleets farther north, away from Klamath River Chinook and into waters with historically higher catch rates of POP, the Council recommended, and NMFS implemented a distribution of 7 mt of POP, from the off-the-top deductions that were made at the start of the 2017–2018 biennium, to the MS and C/P sectors, 3.5 mt to each sector, to accommodate potential catch of POP as each sector prosecutes their 2017 Pacific whiting allocations in areas where bycatch of Klamath River Chinook is less likely (May 16, 2017, 82 FR 22428). The Council's intent in distributing the POP, that would otherwise go unharvested, was to maintain 2017 harvest opportunities for the MS and C/P sectors of the Pacific whiting fishery,

while protecting Klamath River Chinook.

At the June 2017 Council meeting, the MS and C/P sectors requested access to the darkblotched rockfish and POP ''buffers'' to continue to accommodate the northern movement of the fleet to reduce harvest of Klamath River Chinook and to prevent closure of either sector prior to harvesting their full allocation of Pacific whiting. In response to this request, the GMT analyzed the current attainments of Pacific whiting, darkblotched and canary rockfishes, and POP, as well as provided some model projections of the estimated needs of the MS and C/P sectors for the 2017 fishing season.

Based on the GMT's analysis, as of June 11, 2017, the MS sector had attained 7.6 percent of their total darkblotched rockfish allocation (0.9 mt out of 11.8 mt), 20.2 percent of their total POP allocation (2.5 mt out of 12.5 mt), and 22.2 percent of their total Pacific whiting allocation (19,334 mt out of 87,044 mt). Over the past 6 years, (2011–2016) by June 11th of each year, the MS sector has harvested an average of 0.84 mt of darkblotched rockfish, 1.65 mt of POP, and 14,689.21 mt of Pacific whiting.

Based on the GMT's analysis, as of June 11, 2017, the C/P sector had attained 26 percent of their total darkblotched rockfish allocation (4.3 mt out of 16.4 mt), 51.1 percent of their total POP allocation (8.3 mt out of 16.2 mt), and 31.9 percent of their total Pacific whiting allocation (39,973.5 mt out of 123,312 mt). Over the past 6 years, (2011–2016) by June 11th of each year, the C/P sector has harvested an average of 1.05 mt of darkblotched rockfish, 1.35 mt of POP, and 31,595.85 mt of Pacific whiting.

On June 20, 2017, NMFS considered additional POP, darkblotched rockfish, and Pacific whiting landing information for the C/P and MS sectors. As of that date, the C/P sector had harvested 28.6 percent (4.69 mt out of 16.4 mt) of their total darkblotched rockfish allocation, 89.81 percent (14.55 mt out of 16.2 mt) of their total POP allocation, and 37.64 percent (46,413.13 mt out of 123,312 mt) of their total Pacific whiting allocation. Additionally, as of the same date, the MS sector had harvested 8.56 percent (1.01 mt out of 11.8 mt) of their total darkblotched rockfish allocation, 22.64 percent (2.83 mt out of 12.5 mt) of their total POP allocation, and 27.48 percent (23,921.03 mt out of 87,044 mt) of their total Pacific whiting allocation.

To continue to accommodate movement of the at-sea fleets farther north, away from Klamath River Chinook and into waters with historically higher catch rates of POP, both sectors would need additional darkblotched rockfish and POP quota to prevent their fishery from closing due to exceeding their overfished species allocations. The Council's intent is to provide fisheries with a demonstrated need access to quota that would otherwise go unharvested, maintain 2017 harvesting opportunities for the MS and C/P sectors of the Pacific whiting fishery, and continue protecting Klamath River Chinook.

Therefore, after reviewing the best available information on interactions between the Pacific whiting fleet and salmon, POP, and darkblotched rockfish, the Council recommended and NMFS is implementing a distribution of 25 mt of POP, from the off-the-top deductions that were made at the start of the 2017–2018 biennium, to the MS and C/P sectors, 12.5 mt to each sector, to accommodate potential catch of POP as each sector prosecutes their 2017 Pacific whiting allocations in areas where bycatch of Klamath River Chinook is less likely. Additionally, the Council recommended and NMFS is implementing a distribution of 50 mt of darkblotched rockfish, from the ''off-the-top'' deductions that were made at the start of the 2017–2018 biennium, to the MS and C/P sectors, 25 mt to each sector, to accommodate potential catch of darkblotched rockfish as each sector prosecutes their 2017 Pacific whiting harvest in areas where bycatch of Klamath River Chinook is less likely. These changes are implemented through modifications to the footnotes for Table 1a and Table 1b to Part 660, Subpart C of the CFR.

This rule distributes 25 mt of POP and 50 mt of darkblotched rockfish that is anticipated to go unharvested through the end of 2017 to the MS and C/P sectors, implementing the Council's recommendation increases the POP allocations to 25 mt for the MS sector and 28.7 mt for the C/P sector and the darkblotched rockfish set-asides to 36.8 mt for the MS sector and 41.4 mt for the C/P sector. This rule also provides the fleet added flexibility to fish in areas where Klamath River Chinook are less likely to be encountered while reducing the risk of closure of the MS and C/P sectors prior to full attainment of the Pacific whiting allocation if higher catch rates of POP and darkblotched rockfish continue for the remainder of the 2017 fishing season. Transfer of POP and darkblotched rockfish to the MS and C/P sectors, when combined with projected impacts from all other sources, is not expected to result in greater impacts to POP, darkblotched rockfish, or other overfished species than originally projected through the end of the year.

**Classification**

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, West Coast Region, NMFS, during business hours.

NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective July 3, 2017. The adjustments to management measures in this document affect commercial fisheries in Washington, Oregon and California. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2017–18.

Accordingly, for the reasons stated below, NMFS finds good cause to waive prior notice and comment and to waive the delay in effectiveness.

*Fishery Management Measures for Lingcod LE and OA Fixed Gear North and South of 40°10′ N. lat.*

At its June 2017 meeting, the Council recommended an increase to LE and OA fixed gear lingcod trip limits north and south of 40°10′ N. lat. be implemented as quickly as possible to allow harvest of lingcod to better attain, but not exceed, the 2017 ACLs. There was not sufficient time after that meeting to undergo proposed and final rulemaking before this action needs to be in effect. Affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing the LE and OA fixed gear fishery using the best available science to increase harvesting opportunities without exceeding the ACLs for federally managed species in accordance with the PCGFMP and applicable law. These increases to trip limits must be implemented as quickly as possible to allow LE and OA fixed

gear fishermen an opportunity to harvest higher limits for lingcod coastwide.

It is in the public interest for fishermen to have an opportunity to harvest more of the lingcod ACLs, north and south of 40°10′ N. lat., because the lingcod fishery contributes revenue to the coastal communities of Washington, Oregon, and California. This action, if implemented quickly, is anticipated to allow increased catch of lingcod through the end of the year, and allows harvest as intended by the Council, consistent with the best scientific information available.

The Council considered updated discard mortality rates and the resulting best available projections of yelloweye rockfish harvest that became available at its June 2017 meeting. Projected impacts to yelloweye rockfish through the end of the year were 0.7 mt below the nearshore fishery's 2.1 mt share of the non-trawl allocation. Based on the new information showing lower than anticipated yelloweye rockfish discard mortality, and the need to provide additional harvesting opportunities for healthy and underutilized groundfish species, the Council recommended modifying the shoreward boundary of the non-trawl RCA to open additional area, while keeping harvest of yelloweye rockfish within its HGs and rebuilding ACL.

*Fishery Management Measures for the Non-Trawl RCA between 40°10′ N. lat. and 34°27′ N. lat.*

It is in the public interest for fisherman to have increased access to fishing areas where high-value target species, such as canary and chilipepper rockfish, are available, because the commercial non-trawl fisheries contribute revenue to the coastal communities of Washington, Oregon, and California. This action, if implemented quickly, is anticipated to allow increased catch of healthy and underutilized groundfish, and allows harvest as intended by the Council, consistent with the best scientific information available.

**Transferring POP to the MS and C/P Sectors**

At its June 2017 meeting, the Council recommended that the distribution of POP and darkblotched rockfish ''buffers'' to the MS and C/P sectors and be implemented as quickly as possible to facilitate fishing for Pacific whiting in northern waters to avoid bycatch of Klamath River Chinook salmon. There was not sufficient time after that meeting to undergo proposed and final rulemaking before this action needs to be in effect. Affording the time necessary for prior notice and opportunity for public comment would postpone transfer of POP and darkblotched rockfish to the MS and C/P sectors until later in the season, or potentially eliminate the possibility or doing so during the 2017 calendar year entirely, and is therefore impractical. Failing to reapportion POP and darkblotched rockfish to the MS and C/P sectors in a timely manner could result in additional impacts to Klamath River Chinook salmon if catch of POP or darkblotched rockfish approaches the MS or C/P sectors' POP and darkblotched rockfish allocations and the fleet moves south to prevent a closure prior to their Pacific whiting allocations being harvested. Additionally, failing to reapportion the POP and darkblotched rockfish ''buffers'' in a timely manner could leave quota unharvested through the end of the year, which would prevent harvest as intended by the Council. New information and analyses that became available to the Council in June indicate that both the MS and C/P sectors need additional POP and darkblotched rockfish to decrease the likelihood of closing one or more of these sectors due to attainment of their rockfish allocations. Therefore, distribution of the POP and darkblotched rockfish buffers is consistent with regulations at § 660.60(c)(3)(ii).

It is in the public interest for the MS and C/P sectors to have an opportunity to harvest their allocations of Pacific whiting without interruption because the Pacific whiting fishery contributes a large amount of revenue to the coastal communities of Washington and Oregon. Additionally, it is in the public interest to continue to protect Klamath River Chinook and reduce potential fishing impacts from the Pacific whiting fishery in areas where directed salmon fishing has been prohibited. Providing more POP and darkblotched rockfish to the MS and C/P sector would allow them to fish further north, lowering the chances of encountering Klamath River Chinook. This action facilitates fleet dynamics to avoid bycatch of Klamath River Chinook salmon, and allows harvest as intended by the Council, consistent with the best scientific information available.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian Fisheries.

Dated: July 3, 2017.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Tables 1a and 1b to part 660, subpart C, are revised to read as follows:

## Table 1a to Part 660, Subpart C – 2017, Specifications of OFL, ABC, ACL, ACT and Fishery HG (Weights in Metric Tons)

| Species | Area | OFL | ABC | ACL a/ | Fishery HG b/ |
|---|---|---|---|---|---|
| BOCACCIO c/ | S. of 40°10' N. lat. | 2,139 | 2,044 | 790 | 775 |
| COWCOD d/ | S. of 40°10' N. lat. | 70 | 63 | 10 | 8 |
| DARKBLOTCHED ROCKFISH e/ | Coastwide | 671 | 641 | 641 | 564 |
| PACIFIC OCEAN PERCH f/ | N. of 40°10' N. lat. | 964 | 922 | 281 | 232 |
| YELLOWEYE ROCKFISH g/ | Coastwide | 57 | 47 | 20 | 15 |
| Arrowtooth flounder h/ | Coastwide | 16,571 | 13,804 | 13,804 | 11,706 |
| Big skate i/ | Coastwide | 541 | 494 | 494 | 437 |
| Black rockfish j/ | California (South of 42° N. lat.) | 349 | 334 | 334 | 333 |
| Black rockfish k/ | Oregon (Between 46°16' N. lat. and 42° N. lat.) | 577 | 527 | 527 | 526 |
| Black rockfish l/ | Washington (N. of 46°16' N. lat.) | 319 | 305 | 305 | 287 |
| Blackgill rockfish m/ | S. of 40°10' N. lat. | NA | NA | NA | NA |
| Cabezon n/ | California (South of 42° N. lat.) | 157 | 150 | 150 | 150 |
| Cabezon o/ | Oregon (Between 46°16' N. lat. and 42° N. lat.) | 49 | 47 | 47 | 47 |
| California scorpionfish p/ | S. of 34°27' N. lat. | 289 | 264 | 150 | 148 |
| Canary rockfish q/ | Coastwide | 1,793 | 1,714 | 1,714 | 1,467 |
| Chilipepper r/ | S. of 40°10' N. lat. | 2,727 | 2,607 | 2,607 | 2,561 |
| Dover sole s/ | Coastwide | 89,702 | 85,755 | 50,000 | 48,406 |
| English sole t/ | Coastwide | 10,914 | 9,964 | 9,964 | 9,751 |
| Lingcod u/ | N. of 40°10' N. lat. | 3,549 | 3,333 | 3,333 | 3,055 |
| Lingcod v/ | S. of 40°10' N. lat. | 1,502 | 1,251 | 1,251 | 1,242 |
| Longnose skate w/ | Coastwide | 2,556 | 2,444 | 2,000 | 1,853 |
| Longspine thornyhead x/ | Coastwide | 4,571 | 3,808 | NA | NA |
| Longspine thornyhead | N. of 34°27' N. lat. | NA | NA | 2,894 | 2,847 |
| Longspine thornyhead | S. of 34°27' N. lat. | NA | NA | 914 | 911 |
| Pacific cod y/ | Coastwide | 3,200 | 2,221 | 1,600 | 1,091 |
| Pacific whiting z/ | Coastwide | 969,840 | z/ | z/ | 362,682 |
| Petrale sole aa/ | Coastwide | 3,280 | 3,136 | 3,136 | 2,895 |
| Sablefish | Coastwide | 8,050 | 7,350 | NA | NA |
| Sablefish bb/ | N. of 36° N. lat. | NA | NA | 5,252 | See Table 1c |
| Sablefish cc/ | S. of 36° N. lat. | NA | NA | 1,864 | 1,859 |
| Shortbelly rockfish dd/ | Coastwide | 6,950 | 5,789 | 500 | 489 |
| Shortspine thornyhead ee/ | Coastwide | 3,144 | 2,619 | NA | NA |
| Shortspine thornyhead | N. of 34°27' N. lat. | NA | NA | 1,713 | 1,654 |
| Shortspine thornyhead | S. of 34°27' N. lat. | NA | NA | 906 | 864 |
| Spiny dogfish ff/ | Coastwide | 2,514 | 2,094 | 2,094 | 1,756 |
| Splitnose rockfish gg/ | S. of 40°10' N. lat. | 1,841 | 1,760 | 1,760 | 1,749 |
| Starry flounder hh/ | Coastwide | 1,847 | 1,282 | 1,282 | 1,272 |
| Widow rockfish ii/ | Coastwide | 14,130 | 13,508 | 13,508 | 13,290 |
| Yellowtail rockfish jj/ | N. of 40°10' N. lat. | 6,786 | 6,196 | 6,196 | 5,166 |
| Minor Nearshore Rockfish kk/ | N. of 40°10' N. lat. | 118 | 105 | 105 | 103 |
| Minor Shelf Rockfish ll/ | N. of 40°10' N. lat. | 2,303 | 2,049 | 2,049 | 1,965 |
| Minor Slope Rockfish mm/ | N. of 40°10' N. lat. | 1,897 | 1,755 | 1,755 | 1,690 |
| Minor Nearshore Rockfish nn/ | S. of 40°10' N. lat. | 1,329 | 1,166 | 1,163 | 1,159 |
| Minor Shelf Rockfish oo/ | S. of 40°10' N. lat. | 1,917 | 1,624 | 1,623 | 1,576 |
| Minor Slope Rockfish pp/ | S. of 40°10' N. lat. | 827 | 718 | 707 | 687 |
| Other Flatfish qq/ | Coastwide | 11,165 | 8,510 | 8,510 | 8,306 |
| Other Fish rr/ | Coastwide | 537 | 474 | 474 | 474 |

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Bocaccio. A stock assessment was conducted in 2015 for the bocaccio stock between the U.S.-Mexico border and Cape Blanco. The stock is managed with stock-specific harvest specifications south of 40°10'

N. lat. and within the Minor Shelf Rockfish complex north of 40°10' N. lat. A historical catch distribution of approximately 7.4 percent was used to apportion the assessed stock to the area north of 40°10' N. lat. The bocaccio stock was estimated to be at 36.8 percent of its unfished biomass in 2015. The OFL of 2,139 mt is projected in the 2015 stock assessment using an FMSY proxy of F50%. The ABC of 2,044 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The 790 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2022 and an SPR harvest rate of 77.7 percent. 15.4 mt is deducted from the ACL to accommodate the incidental open access fishery (0.8 mt), EFP catch (10 mt) and research catch (4.6 mt), resulting in a fishery HG of 774.6 mt. The California recreational fishery has an HG of 326.1 mt.

[d] Cowcod. A stock assessment for the Conception Area was conducted in 2013 and the stock was estimated to be at 33.9 percent of its unfished biomass in 2013. The Conception Area OFL of 58 mt is projected in the 2013 rebuilding analysis using an FMSY proxy of F50%. The OFL contribution of 12 mt for the unassessed portion of the stock in the Monterey area is based on depletion-based stock reduction analysis. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10' N. lat. OFL of 70 mt. The ABC for the area south of 40°10' N. lat. is 63 mt. The assessed portion of the stock in the Conception Area is considered category 2, with a Conception area contribution to the ABC of 53 mt, which is an 8.7 percent reduction from the Conception area OFL (σ=0.72/P*=0.45). The unassessed portion of the stock in the Monterey area is considered a category 3 stock, with a contribution to the ABC of 10 mt, which is a 16.6 percent reduction from the Monterey area OFL (σ=1.44/P*=0.45). A single ACL of 10 mt is being set for both areas combined. The ACL of 10 mt is based on the rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 82.7 percent, which is equivalent to an exploitation rate (catch over age 11+ biomass) of 0.007. 2 mt is deducted from the ACL to accommodate the incidental open access fishery (less than 0.1 mt), EFP fishing (less than 0.1 mt) and research activity (2 mt), resulting in a fishery HG of 8 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 4 mt is being set for both areas combined.

[e] Darkblotched rockfish. A 2015 stock assessment estimated the stock to be at 39 percent of its unfished biomass in 2015. The OFL of 671 mt is projected in the 2015 stock assessment using an FMSY proxy of F50%. The ABC of 641 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC, as the stock is projected to be above its target biomass of B40% in 2017. 77.3 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (24.5 mt), EFP catch (0.1 mt), research catch (2.5 mt) and an additional deduction for unforeseen catch events (50 mt), resulting in a fishery HG of 563.8 mt. Of the 50 mt initially deducted from the ACL to account for unforeseen catch events, 50 mt is distributed to the mothership and catcher/processor sectors inseason, 25 mt to each sector, consistent with 660.60(c)(3)(ii).

[f] Pacific ocean perch. A stock assessment was conducted in 2011 and the stock was estimated to be at 19.1 percent of its unfished biomass in 2011. The OFL of 964 mt for the area north of 40°10' N. lat. is based on an updated catch-only projection of the 2011 rebuilding analysis using an F50% FMSY proxy. The ABC of 922 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is based on the current rebuilding plan with a target year to rebuild of 2051 and a constant catch amount of 281 mt in 2017 and 2018, followed in 2019 and beyond by ACLs based on an SPR harvest rate of 86.4 percent. 49.4 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (10 mt), research catch (5.2 mt) and an additional deduction for unforeseen catch events (25 mt), resulting in a fishery HG of 231.6 mt. Of the 10 mt initially deducted from the ACL to account for mortality in the incidental open access fishery, a total of 7 mt is distributed to the mothership and catcher/processor sectors inseason, 3.5 mt to each sector consistent with 660.60(c)(3)(ii), resulting in a 3 mt deduction from the ACL for mortality in the incidental open access fishery. Of the 25 mt initially deducted from the ACL to account for unforeseen catch events, 25 mt is distributed to the mothership and catcher/processor sectors inseason, 12.5 mt to each sector, consistent with 660.60(c)(3)(ii).

[g] Yelloweye rockfish. A stock assessment update was conducted in 2011. The stock was estimated to be at 21.4 percent of its unfished biomass in 2011. The 57 mt coastwide OFL is based on a catch-only update of the 2011 stock assessment, assuming actual catches since 2011 and using an FMSY proxy of F50%. The ABC of 47 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The 20 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76.0 percent. 5.4 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.4 mt), EFP catch (less than 0.1 mt) and research catch (2.7 mt), resulting in a fishery HG of 14.6 mt. Recreational HGs are: 3.3 mt (Washington); 3 mt (Oregon); and 3.9 mt (California).

[h] Arrowtooth flounder. The arrowtooth flounder stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 16,571 mt is derived from a catch-only update of the 2007 stock assessment assuming actual catches since 2007 and using an F30% FMSY proxy. The ABC of 13,804 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B25%. 2,098.1 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (40.8 mt), and research catch (16.4 mt), resulting in a fishery HG of 11,705.9 mt.

[i] Big skate. The OFL of 541 mt is based on an estimate of trawl survey biomass and natural mortality. The ABC of 494 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL is set equal to the ABC. 57.4 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), the incidental open access fishery (38.4 mt), and research catch (4 mt), resulting in a fishery HG of 436.6 mt.

[j] Black rockfish (California). A 2015 stock assessment estimated the stock to be at 33 percent of its unfished biomass in 2015. The OFL of 349 mt is projected in the 2015 stock assessment using an FMSY proxy of F50%. The ABC of 334 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is projected to be above its target biomass of B40% in 2017. 1 mt is deducted from the ACL to accommodate EFP catch (1 mt), resulting in a fishery HG of 333 mt.

[k] Black rockfish (Oregon). A 2015 stock assessment estimated the stock to be at 60 percent of its unfished biomass in 2015. The OFL of 577 mt is projected in the 2015 stock assessment using an FMSY proxy of F50%. The ABC of 527 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 0.6 mt is deducted from the ACL to accommodate the incidental open access fishery (0.6 mt), resulting in a fishery HG of 526.4 mt.

[l] Black rockfish (Washington). A 2015 stock assessment estimated the stock to be at 43 percent of its unfished biomass in 2015. The OFL of 319 mt is projected in the 2015 stock assessment using an FMSY proxy of F50%. The ABC of 305 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 18 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG of 287 mt.

[m] Blackgill rockfish. Blackgill rockfish contributes to the harvest specifications for the Minor Slope Rockfish South complex. See footnote/pp.

[n] Cabezon (California). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off California was estimated to be at 48.3 percent of its unfished biomass in 2009. The OFL of 157 mt is calculated using an FMSY proxy of F45%. The ABC of 150 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 0.3 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 149.7 mt.

[o] Cabezon (Oregon). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off Oregon was estimated to be at 52 percent of its unfished biomass in 2009. The OFL of 49 mt is calculated using an FMSY proxy of F45%. The ABC of 47 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 species. The ACL is set equal to the ABC because the

stock is above its target biomass of B40%. There are no deductions from the ACL so the fishery HG is also equal to the ACL of 47 mt.

[p] California scorpionfish. A California scorpionfish assessment was conducted in 2005 and was estimated to be at 79.8 percent of its unfished biomass in 2005. The OFL of 289 mt is based on projections from a catch-only update of the 2005 assessment assuming actual catches since 2005 and using an FMSY harvest rate proxy of F50%. The ABC of 264 mt is an 8.7 percent reduction from the OFL ($\sigma$=0.72/P*=0.45) because it is a category 2 stock. The ACL is set at a constant catch amount of 150 mt. 2.2 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt) and research catch (0.2 mt), resulting in a fishery HG of 147.8 mt. An ACT of 111 mt is established.

[q] Canary rockfish. A stock assessment was conducted in 2015 and the stock was estimated to be at 55.5 percent of its unfished biomass coastwide in 2015. The coastwide OFL of 1,793 mt is projected in the 2015 assessment using an FMSY harvest rate proxy of F50%. The ABC of 1,714 mt is a 4.4 percent reduction from the OFL ($\sigma$=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 247 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.2 mt), EFP catch (1 mt), research catch (7.2 mt), and an additional deduction for unforeseen catch events (188 mt), resulting in a fishery HG of 1,466.6 mt. Recreational HGs are: 50 mt (Washington); 75 mt (Oregon); and 135 mt (California).

[r] Chilipepper. A coastwide update assessment of the chilipepper stock was conducted in 2015 and estimated to be at 64 percent of its unfished biomass in 2015. Chilipepper are managed with stock-specific harvest specifications south of 40°10′ N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. Projected OFLs are stratified north and south of 40°10′ N. lat. based on the average historical assessed area catch, which is 93 percent for the area south of 40°10′ N. lat. and 7 percent for the area north of 40°10′ N. lat. The OFL of 2,727 mt for the area south of 40°10′ N. lat. is projected in the 2015 assessment using an FMSY proxy of F50%. The ABC of 2,607 mt is a 4.4 percent reduction from the OFL ($\sigma$=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 45.9 mt is deducted from the ACL to accommodate the incidental open access fishery (5 mt), EFP fishing (30 mt), and research catch (10.9 mt), resulting in a fishery HG of 2,561.1 mt.

[s] Dover sole. A 2011 Dover sole assessment estimated the stock to be at 83.7 percent of its unfished biomass in 2011. The OFL of 89,702 mt is based on an updated catch-only projection from the 2011 stock assessment assuming actual catches since 2011 and using an FMSY proxy of F30%. The ABC of 85,755 mt is a 4.4 percent reduction from the OFL ($\sigma$=0.36/P*=0.45) because it is a category 1 stock. The ACL could be set equal to the ABC because the stock is above its target biomass of B25%. However, the ACL of 50,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. 1,593.7 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (54.8 mt), and research catch (41.9 mt), resulting in a fishery HG of 48,406.3 mt.

[t] English sole. A 2013 stock assessment was conducted, which estimated the stock to be at 88 percent of its unfished biomass in 2013. The OFL of 10,914 mt is projected in the 2013 assessment using an FMSY proxy of F30%. The ABC of 9,964 mt is an 8.7 percent reduction from the OFL ($\sigma$=0.72/P*=0.45) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B25%. 212.8 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (7.0 mt) and research catch (5.8 mt), resulting in a fishery HG of 9,751.2 mt.

[u] Lingcod north. The 2009 lingcod assessment modeled two populations north and south of the California-Oregon border (42° N. lat.). Both populations were healthy with stock depletion estimated at 62 and 74 percent for the north and south, respectively in 2009. The OFL is based on an updated catch-only projection from the 2009 assessment assuming actual catches since 2009 and using an FMSY proxy of F45%. The OFL is apportioned north of 40°10′ N. lat. by adding 48% of the OFL from California, resulting in an OFL of 3,549 mt for the area north of 40°10′ N. lat. The ABC of 3,333 mt is based on a 4.4 percent reduction ($\sigma$=0.36/P*=0.45) from the OFL contribution for the area north of 42° N. lat. because it is a category 1 stock, and an 8.7 percent reduction ($\sigma$=0.72/P*=0.45) from the OFL contribution for the area between 42° N. lat. and 40°10′ N. lat. because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 278.2 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (16 mt), EFP catch (0.5 mt) and research catch (11.7 mt), resulting in a fishery HG of 3,054.8 mt.

[v] Lingcod south. The 2009 lingcod assessment modeled two populations north and south of the California-Oregon border (42° N. lat.). Both populations were healthy with stock depletion estimated at 62 and 74 percent for the north and south, respectively in 2009.The OFL is based on an updated catch-only projection of the 2009 stock assessment assuming actual catches since 2009 using an FMSY proxy of F45%. The OFL is apportioned by subtracting 48% of the California OFL, resulting in an OFL of 1,502 mt for the area south of 40°10′ N. lat. The ABC of 1,251 mt is based on a 16.7 percent reduction from the OFL ($\sigma$=0.72/P*=0.40) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 9 mt is deducted from the ACL to accommodate the incidental open access fishery (6.9 mt), EFP fishing (1 mt), and research catch (1.1 mt), resulting in a fishery HG of 1,242 mt.

[w] Longnose skate. A stock assessment was conducted in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 2,556 mt is derived from the 2007 stock assessment using an FMSY proxy of F50%. The ABC of 2,444 mt is a 4.4 percent reduction from the OFL ($\sigma$=0.36/P*=0.45) because it is a category 1 stock. The ACL of 2,000 mt is a fixed harvest level that provides greater access to the stock and is less than the ABC. 147 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), incidental open access fishery (3.8 mt), and research catch (13.2 mt), resulting in a fishery HG of 1,853 mt.

[x] Longspine thornyhead. A 2013 longspine thornyhead coastwide stock assessment estimated the stock to be at 75 percent of its unfished biomass in 2013. A coastwide OFL of 4,571 mt is projected in the 2013 stock assessment using an F50% FMSY proxy. The coastwide ABC of 3,808 mt is a 16.7 percent reduction from the OFL ($\sigma$=0.72/P*=0.40) because it is a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,894 mt, and is 76 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 46.8 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (3.3 mt), and research catch (13.5 mt), resulting in a fishery HG of 2,847.2 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 914 mt and is 24 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 3.2 mt is deducted from the ACL to accommodate the incidental open access fishery (1.8 mt), and research catch (1.4 mt), resulting in a fishery HG of 910.8 mt.

[y] Pacific cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,221 mt is a 30.6 percent reduction from the OFL ($\sigma$=1.44/P*=0.40) because it is a category 3 stock. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. 509 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (7 mt), and the incidental open access fishery (2 mt), resulting in a fishery HG of 1,091 mt.

[z] Pacific whiting. The coastwide (U.S. and Canada) stock assessment was published in 2017 and estimated the spawning stock to be at 89 percent of its unfished biomass. The 2017 coastwide OFL of 969,840 mt is based on the 2017 assessment with an F40% FMSY proxy. The 2017 coastwide, unadjusted Total Allowable Catch (TAC) of 531,501 mt is based on the 2017 stock assessment and the recommendation by the Joint Management Committee (JMC), based on a precautionary approach. The U.S. TAC is 73.88 percent of the coastwide TAC, or 392,673 mt unadjusted TAC for 2017. 15 percent of each party's unadjusted 2016 TAC (48,760 mt for the U.S) is added to each party's 2017 unadjusted TAC, resulting in a U.S. adjusted 2017 TAC of 431,433 mt. The 2017 fishery HG for Pacific whiting is 362,682 mt. This amount was determined by deducting from the total U.S. TAC of 431,433 mt, the 77,251 mt tribal allocation, along with 1,500 mt for scientific research catch and fishing mortality in non-groundfish fisheries.

[aa] Petrale sole. A 2015 stock assessment update was conducted, which estimated the stock to be at 31 percent of its unfished

biomass in 2015. The OFL of 3,280 mt is projected in the 2015 assessment using an FMSY proxy of F30%. The ABC of 3,136 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B25%. 240.9 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), the incidental open access fishery (3.2 mt) and research catch (17.7 mt), resulting in a fishery HG of 2,895.1 mt.

[bb] Sablefish north. A coastwide sablefish stock assessment update was conducted in 2015. The coastwide sablefish biomass was estimated to be at 33 percent of its unfished biomass in 2015. The coastwide OFL of 8,050 mt is projected in the 2015 stock assessment using an FMSY proxy of F45%. The ABC of 7,350 mt is an 8.7 percent reduction from the OFL (σ=0.36/P*=0.40). The 40–10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N. lat., using the 2003–2014 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.8 percent apportioned north of 36° N. lat. and 26.2 percent apportioned south of 36° N. lat. The northern ACL is 5,252 mt and is reduced by 525 mt for the Tribal allocation (10 percent of the ACL north of 36° N. lat.). The 525 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[cc] Sablefish south. The ACL for the area south of 36° N. lat. is 1,864 mt (26.2 percent of the calculated coastwide ACL value). 5 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt) and research catch (3 mt), resulting in a fishery HG of 1,859 mt.

[dd] Shortbelly rockfish. A non-quantitative shortbelly rockfish assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated to be 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt is based on the estimated MSY in the 2007 stock assessment. The ABC of 5,789 mt is a 16.7 percent reduction of the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The 500 mt ACL is set to accommodate incidental catch when fishing for co-occurring healthy stocks and in recognition of the stock's importance as a forage species in the California Current ecosystem. 10.9 mt is deducted from the ACL to accommodate the incidental open access fishery (8.9 mt) and research catch (2 mt), resulting in a fishery HG of 489.1 mt.

[ee] Shortspine thornyhead. A 2013 coastwide shortspine thornyhead stock assessment estimated the stock to be at 74.2 percent of its unfished biomass in 2013. A coastwide OFL of 3,144 mt is projected in the 2013 stock assessment using an F50% FMSY proxy. The coastwide ABC of 2,619 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,713 mt. The northern ACL is 65.4 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 59 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.8 mt), and research catch (7.2 mt), resulting in a fishery HG of 1,654 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 906 mt. The southern ACL is 34.6 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 42.3 mt is deducted from the ACL to accommodate the incidental open access fishery (41.3 mt) and research catch (1 mt), resulting in a fishery HG of 863.7 mt for the area south of 34°27′ N. lat.

[ff] Spiny dogfish. A coastwide spiny dogfish stock assessment was conducted in 2011. The coastwide spiny dogfish biomass was estimated to be at 63 percent of its unfished biomass in 2011. The coastwide OFL of 2,514 mt is derived from the 2011 assessment using an FMSY proxy of F50%. The coastwide ABC of 2,094 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 338 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (49.5 mt), EFP catch (1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,756 mt.

[gg] Splitnose rockfish. A coastwide splitnose rockfish assessment was conducted in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose rockfish in the north is managed in the Minor Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N. lat. The coastwide OFL is projected in the 2009 assessment using an FMSY proxy of F50%. The coastwide OFL is apportioned north and south of 40°10′ N. lat. based on the average 1916–2008 assessed area catch, resulting in 64.2 percent of the coastwide OFL apportioned south of 40°10′ N. lat., and 35.8 percent apportioned for the contribution of splitnose rockfish to the northern Minor Slope Rockfish complex. The southern OFL of 1,841 mt results from the apportionment described above. The southern ABC of 1,760 mt is a 4.4 percent reduction from the southern OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of B40%. 10.7 mt is deducted from the ACL to accommodate the incidental open access fishery (0.2 mt), research catch (9 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,749.3 mt.

[hh] Starry flounder. The stock was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent in Washington and Oregon, and 62 percent in California). The coastwide OFL of 1,847 mt is set equal to the 2016 OFL, which was derived from the 2005 assessment using an FMSY proxy of F30%. The ABC of 1,282 mt is a 30.6 percent reduction from the OFL (σ=1.44/P*=0.40) because it is a category 3 stock. The ACL is set equal to the ABC because the stock was estimated to be above its target biomass of B25% in 2017. 10.3 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), and the incidental open access fishery (8.3 mt), resulting in a fishery HG of 1,271.7 mt.

[ii] Widow rockfish. The widow rockfish stock was assessed in 2015 and was estimated to be at 75 percent of its unfished biomass in 2015. The OFL of 14,130 mt is projected in the 2015 stock assessment using the F50% FMSY proxy. The ABC of 13,508 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 217.7 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (0.5 mt), EFP catch (9 mt) and research catch (8.2 mt), resulting in a fishery HG of 13,290.3 mt.

[jj] Yellowtail rockfish. A 2013 yellowtail rockfish stock assessment was conducted for the portion of the population north of 40°10′ N. lat. The estimated stock depletion was 67 percent of its unfished biomass in 2013. The OFL of 6,786 mt is projected in the 2013 stock assessment using an FMSY proxy of F50%. The ABC of 6,196 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 1,030 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (3.4 mt), EFP catch (10 mt) and research catch (16.6 mt), resulting in a fishery HG of 5,166.1 mt.

[kk] Minor Nearshore Rockfish north. The OFL for Minor Nearshore Rockfish north of 40°10′ N. lat. of 118 mt is the sum of the OFL contributions for the component species managed in the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (blue/deacon rockfish in California, brown rockfish, China rockfish, and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 105 mt is the summed contribution of the ABCs for the component species. The ACL of 105 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contributions for blue/deacon rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 1.8 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt) and the incidental open access fishery (0.3 mt), resulting in a fishery HG of 103.2 mt. Between 40°10′ N. lat. and 42° N. lat. the Minor Nearshore Rockfish complex north has a HG of 40.2 mt. Blue/deacon rockfish south of 42° N. lat. has a stock-specific HG, described in footnote nn/.

[ll] Minor Shelf Rockfish north. The OFL for Minor Shelf Rockfish north of 40°10′ N. lat. of 2,303 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.36 for a category 1 stock (chilipepper), a sigma value of 0.72 for category 2 stocks (greenspotted rockfish between 40°10′ and 42° N. lat. and greenstriped rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a

P* of 0.45. The resulting ABC of 2,049 mt is the summed contribution of the ABCs for the component species. The ACL of 2,049 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 83.8 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (26 mt), EFP catch (3 mt), and research catch (24.8 mt), resulting in a fishery HG of 1,965.2 mt.

[mm] Minor Slope Rockfish north. The OFL for Minor Slope Rockfish north of 40°10′ N. lat. of 1,897 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the Minor Slope Rockfish complexes are based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.36 for the other category 1 stock (splitnose rockfish), a sigma value of 0.72 for category 2 stocks (rougheye rockfish, blackspotted rockfish, and sharpchin rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish because the variance in estimated spawning biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 1,755 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the ABC because all the assessed component stocks (*i.e.,* rougheye rockfish, blackspotted rockfish, sharpchin rockfish, and splitnose rockfish) are above the target biomass of B40%. 65.1 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (18.6 mt), EFP catch (1 mt), and research catch (9.5 mt), resulting in a fishery HG of 1,689.9 mt.

[nn] Minor Nearshore Rockfish south. The OFL for the Minor Nearshore Rockfish complex south of 40°10′ N. lat. of 1,329 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Nearshore Rockfish complex is based on a sigma value of 0.72 for category 2 stocks (*i.e.,* blue/deacon rockfish north of 34°27′ N. lat., brown rockfish, China rockfish, and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,166 mt is the summed contribution of the ABCs for the component species. The ACL of 1,163 mt is the sum of the contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution for blue/deacon rockfish north of 34°27′ N. lat. and China rockfish where the 40–10 adjustment was applied to the ABC contributions for these two stocks because they are in the precautionary zone. 4.1 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.7 mt), resulting in a fishery HG of 1,158.9 mt. Blue/deacon rockfish south of 42° N. lat. has a stock-specific HG set equal to the 40–10-adjusted ACL for the portion of the stock north of 34°27′ N lat. (243.7 mt) plus the ABC contribution for the unassessed portion of the stock south of 34°27′ N. lat. (60.8 mt). The California (*i.e.* south of 42° N. lat.) blue/deacon rockfish HG is 304.5 mt.

[oo] Minor Shelf Rockfish south. The OFL for the Minor Shelf Rockfish complex south of 40°10′ N. lat. of 1,917 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Shelf Rockfish complex is based on a sigma value of 0.72 for category 2 stocks (greenspotted and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,624 mt is the summed contribution of the ABCs for the component species. The ACL of 1,623 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 47.2 mt is deducted from the ACL to accommodate the incidental open access fishery (8.6 mt), EFP catch (30 mt), and research catch (8.6 mt), resulting in a fishery HG of 1,575.8 mt.

[pp] Minor Slope Rockfish south. The OFL of 827 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Slope Rockfish complex is based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.72 for category 2 stocks (blackgill rockfish, rougheye rockfish, blackspotted rockfish, and sharpchin rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish because the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 718 mt is the summed contribution of the ABCs for the component species. The ACL of 707 mt is the sum of the contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of blackgill rockfish where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 20.2 mt is deducted from the ACL to accommodate the incidental open access fishery (17.2 mt), EFP catch (1 mt), and research catch (2 mt), resulting in a fishery HG of 686.8 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10' N lat. set equal to the species' contribution to the 40–10-adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries counts against this HG of 120.2 mt. Nontrawl fisheries are subject to a blackgill rockfish HG of 44.5 mt.

[qq] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. The Other Flatfish OFL of 11,165 mt is based on the sum of the OFL contributions of the component stocks. The ABC of 8,510 mt is based on a sigma value of 0.72 for a category 2 stock (rex sole) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.40. The ACL is set equal to the ABC. The ACL is set equal to the ABC because all of the assessed stocks (*i.e.,* Pacific sanddabs and rex sole) were above their target biomass of B25%. 204 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (19 mt), resulting in a fishery HG of 8,306 mt.

[rr] Other Fish. The Other Fish complex is comprised of kelp greenling coastwide, cabezon off Washington, and leopard shark coastwide. The 2015 assessment for the kelp greenling stock off of Oregon projected an estimated depletion of 80 percent in 2015. All other stocks are unassessed. The OFL of 537 mt is the sum of the OFL contributions for kelp greenling coastwide, cabezon off Washington, and leopard shark coastwide. The ABC for the Other Fish complex is based on a sigma value of 0.44 for kelp greenling off Oregon and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.44 was calculated for kelp greenling off Oregon because the variance in estimated spawning biomass was greater than the 0.36 sigma used as a proxy for other category 1 stocks. The resulting ABC of 474 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the ABC because all of the assessed stocks (kelp greenling off Oregon) were above their target biomass of B40%. There are no deductions from the ACL so the fishery HG is equal to the ACL of 474 mt.

## Table 1b to Part 660, Subpart C –2017, Allocations by Species or Species Group (Weight in Metric Tons)

| Species | Area | Fishery HG or ACT | Trawl | | Non-trawl | |
|---|---|---|---|---|---|---|
| | | | Percent | Mt | Percent | Mt |
| BOCACCIO a/ | S. of 40°10' N. lat. | 774.6 | 39 | 302.4 | 61 | 472.2 |
| COWCOD a/b/ | S. of 40°10' N. lat. | 4.0 | 36 | 1.4 | 64 | 2.6 |
| DARKBLOTCHED ROCKFISH c/ | Coastwide | 563.8 | 95 | 535.6 | 5 | 28.2 |
| PACIFIC OCEAN PERCH e/ | N. of 40°10' N. lat. | 231.6 | 95 | 220.0 | 5 | 11.6 |
| YELLOWEYE ROCKFISH a/ | Coastwide | 14.6 | NA | 1.1 | NA | 13.1 |
| Arrowtooth flounder | Coastwide | 11,705.9 | 95 | 11,120.6 | 5 | 585.3 |
| Big skate a/ | Coastwide | 436.6 | 95 | 414.8 | 5 | 21.8 |
| Canary rockfish a/d/ | Coastwide | 1,466.6 | NA | 1,060.1 | NA | 406.5 |
| Chilipepper | S. of 40°10' N. lat. | 2,561.1 | 75 | 1,920.8 | 25 | 640.3 |
| Dover sole | Coastwide | 48,406.3 | 95 | 45,986.0 | 5 | 2,420.3 |
| English sole | Coastwide | 9,751.2 | 95 | 9,263.6 | 5 | 487.6 |
| Lingcod | N. of 40°10' N. lat. | 3,054.8 | 45 | 1,374.7 | 55 | 1,680.2 |
| Lingcod | S. of 40°10' N. lat. | 1,242.0 | 45 | 558.9 | 55 | 683.1 |
| Longnose skate a/ | Coastwide | 1,853.0 | 90 | 1,667.7 | 10 | 185.3 |
| Longspine thornyhead | N. of 34°27' N. lat. | 2,847.2 | 95 | 2,704.8 | 5 | 142.4 |
| Pacific cod | Coastwide | 1,091.0 | 95 | 1,036.4 | 5 | 54.5 |
| Pacific whiting f/ | Coastwide | 362,682.0 | 100 | 362,682.0 | 0 | 0.0 |
| Petrale sole | Coastwide | 2,895.1 | 95 | 2,750.3 | 5 | 144.8 |
| Sablefish | N. of 36° N. lat. | N/A | See Table 1c | | | |
| Sablefish | S. of 36° N. lat. | 1,859.0 | 42 | 780.8 | 58 | 1,078.2 |
| Shortspine thornyhead | N. of 34°27' N. lat. | 1,654.0 | 95 | 1,571.3 | 5 | 82.7 |
| Shortspine thornyhead | S. of 34°27' N. lat. | 863.7 | NA | 50.0 | NA | 813.7 |
| Splitnose rockfish | S. of 40°10' N. lat. | 1,749.3 | 95 | 1,661.8 | 5 | 87.5 |
| Stary flounder | Coastwide | 1,271.7 | 50 | 635.9 | 50 | 635.9 |
| Widow rockfish g/ | Coastwide | 13,290.3 | 91 | 12,094.2 | 9 | 1,196.1 |
| Yellowtail rockfish | N. of 40°10' N. lat. | 5,166.1 | 88 | 4,546.1 | 12 | 619.9 |
| Minor Shelf Rockfish a/ | N. of 40°10' N. lat. | 1,965.2 | 60 | 1,183.1 | 40 | 782.1 |
| Minor Slope Rockfish | N. of 40°10' N. lat. | 1,689.9 | 81 | 1,368.8 | 19 | 321.1 |
| Minor Shelf Rockfish a/ | S. of 40°10' N. lat. | 1,575.8 | 12 | 192.2 | 88 | 1,383.6 |
| Minor Slope Rockfish | S. of 40°10' N. lat. | 686.8 | 63 | 432.7 | 37 | 254.1 |
| Other Flatfish | Coastwide | 8,306.0 | 90 | 7,475.4 | 10 | 830.6 |

a/ Allocations decided through the biennial specification process.

b/ The cowcod fishery harvest guideline is further reduced to an ACT of 4.0 mt.

c/ Consistent with regulations at §660.55(c), 9 percent (48.2 mt) of the total trawl allocation for darkblotched rockfish is allocated to the Pacific whiting fishery, as follows: 20.2 mt for the Shorebased IFQ Program, 11.6 mt for the MS sector, and 16.4 mt for the C/P sector. In July 2017, the amounts available to the mothership and catcher/processor fisheries were raised by 25 mt, to 36.6 mt for the mothership fishery and to 41.4 mt for the catcher/processor fishery, by distributing equally the full 50 mt inititally deducted from the ACL to account for unforeseen catch events, consistent with §660.60(c)(3)(ii). The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

d/ Canary rockfish is allocated approximately 72 percent to trawl and 28 percent to non-trawl. 46 mt of the total trawl allocation of canary rockfish is allocated to the MS and C/P sectors, as follows: 30 mt for the MS sector, and 16 mt for the C/P sector.

e/ Consistent with regulations at §660.55(c), 17 percent (37.4 mt) of the total trawl allocation for POP is allocated to the Pacific whiting fishery, as follows: 15.7 mt for the Shorebased IFQ Program, 9.0 mt for the MS sector, and 12.7 mt for the C/P sector. In May 2017, the amounts available to the mothership and catcher/processor fisheries were raised by 3.5 mt, to 12.5 mt for the mothership fishery and to 16.2 mt for the catcher/processor fishery, by distributing 7.0 mt of the 10 mt inititally deducted from the ACL to account for mortality in the incidental open access fishery, consistent with §660.60(c)(3)(ii). In July 2014, the amounts availabile to the mothership and catcher processor fisheries were each raised by 12.5 mt, to 25 mt for the mothership fishery and to 28.7 mt for the catcher/processor fishery, by distributing equally the full 25 mt inititally deducted from the ACL to account for unforeseen catch events, consistent with §660.60(c)(3)(ii). The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

f/ Consistent with regulations at §660.55(f), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent (123,312 mt) for the C/P Coop Program; 24 percent (87,044 mt) for the MS Coop Program; and 42 percent (152,326.5 mt) for the Shorebased IFQ Program. No more than 5 percent of the Shore based IFQ Program allocation (7,616 mt) may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat.

g/ Consistent with regulations at §660.55(c), 10 percent (1,209.4 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 508.0 mt for the shorebased IFQ fishery, 290.3 mt for the mothership fishery, and 411.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

■ 3. Tables 2 (North) and 2 (South) to part 660, subpart E, are revised to read as follows:

■ 4. Tables 3 (North) and 3 (South) to part 660, subpart F, are revised to read as follows:

**BILLING CODE 3510–22–P**

**Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.**

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 06222017

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| **Rockfish Conservation Area (RCA)[1/]:** | | | | | | | |
| 1 | North of 46°16' N. lat. | shoreline - 100 fm line[1/] | | | | | |
| 2 | 46°16' N. lat. - 42°00' N. lat. | 30 fm line[1/] - 100 fm line[1/] | | | | | |
| 3 | 42°00' N. lat. - 40°10' N. lat. | 30 fm line[1/] - 100 fm line[1/] | | | | | |
| **See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | | |
| State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California. | | | | | | | |
| 4 | **Minor Slope Rockfish[2/] & Darkblotched rockfish** | 4,000 lb/ 2 months | | | | | |
| 5 | **Pacific ocean perch** | 1,800 lb/ 2 months | | | | | |
| 6 | **Sablefish** | 1,125 lb/week, not to exceed 3,375 lb/ 2 months | 1,100 lb/week, not to exceed 3,300 lb/ 2 months | | | | |
| 7 | **Longspine thornyhead** | 10,000 lb/ 2 months | | | | | |
| 8 | **Shortspine thornyhead** | 2,000 lb/ 2 months | | | 2,500 lb/ 2 months | | |
| 9<br>10<br>11<br>12<br>13<br>14 | **Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]** | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs. | | | | | |
| 15 | **Whiting** | 10,000 lb/ trip | | | | | |
| 16 | **Minor Shelf Rockfish[2/], Shortbelly, & Widow rockfish** | 200 lb/ month | | | | | |
| 17 | **Yellowtail rockfish** | 1,000 lb/ month | | | | | |
| 18 | **Canary rockfish** | 300 lb/ 2 months | | | | | |
| 19 | **Yelloweye rockfish** | CLOSED | | | | | |
| 20 | **Minor Nearshore Rockfish & Black rockfish** | | | | | | |
| 21 | North of 42°00' N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/] | | | | | |
| 22 | 42°00' N. lat. - 40°10' N. lat. | 8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish | 7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish | | | | |
| 23 | **Lingcod[5/]** | 200 lb/2 months | | 1,200 lb/ 2 months | 1,400 lb/ bimonthly | 700 lb/ month | 400 lb/ month |
| 24 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 25 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 26 | **Longnose skate** | Unlimited | | | | | |
| 27 | **Other Fish[6/]& Cabezon in Oregon and California** | Unlimited | | | | | |

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.**

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 06202019

| | | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|---|
| **Rockfish Conservation Area (RCA)[1/]:** | | | | | | | | |
| 1 | 40°10' N. lat. - 34°27' N. lat. | | 40 fm line[1/] - 125 fm line[1/] | | | | | |
| 2 | South of 34°27' N. lat. | | 75 fm line[1/] - 150 fm line[1/] (also applies around islands) | | | | | |
| **See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | | | |
| State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California. | | | | | | | | |
| 3 | **Minor Slope rockfish[2/] & Darkblotched rockfish** | | 40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish | | | 40,000 lb/ 2 months, of which no more than 1,600 lb may be blackgill rockfish | | |
| 4 | **Splitnose rockfish** | | 40,000 lb/ 2 months | | | | | |
| 5 | **Sablefish** | | | | | | | |
| 6 | | 40°10' N. lat. - 36°00' N. lat. | 1,125 lb/week, not to exceed 3,375 lb/ 2 months | 1,100 lb/week, not to exceed 3,300 lb/ 2 months | | | | |
| 7 | | South of 36°00' N. lat. | 2,000 lb/ week | | | | | |
| 8 | **Longspine thornyhead** | | 10,000 lb/ 2 months | | | | | |
| 9 | **Shortspine thornyhead** | | | | | | | |
| 10 | | 40°10' N. lat. - 34°27' N. lat. | 2,000 lb/ 2 months | | | 2,500 lb/ 2 months | | |
| 11 | | South of 34°27' N. lat. | 3,000 lb/ 2 months | | | | | |
| 12<br>13<br>14<br>15<br>16<br>17 | **Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]** | | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs. | | | | | |
| 18 | **Whiting** | | 10,000 lb/ trip | | | | | |
| 19 | **Minor Shelf Rockfish[2/], Shortbelly rockfish, Widow rockfish (including Chilipepper between 40°10' - 34°27' N. lat.)** | | | | | | | |
| 20 | | 40°10' N. lat. - 34°27' N. lat. | Minor shelf rockfish, shortbelly, widow rockfish, & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper. | | | | | |
| 21 | | South of 34°27' N. lat. | 4,000 lb/ 2 months | CLOSED | 4,000 lb/ 2 months | | | |
| 22 | **Chilipepper** | | | | | | | |
| 23 | | 40°10' N. lat. - 34°27' N. lat. | Chilipepper included under minor shelf rockfish, shortbelly and widow rockfish limits - - See above | | | | | |
| 24 | | South of 34°27' N. lat. | 2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA | | | | | |
| 25 | **Canary rockfish** | | 300 lb/ 2 months | | | | | |
| 26 | **Yelloweye rockfish** | | CLOSED | | | | | |
| 27 | **Cowcod** | | CLOSED | | | | | |
| 28 | **Bronzespotted rockfish** | | CLOSED | | | | | |
| 29 | **Bocaccio** | | | | | | | |
| 30 | | 40°10' N. lat. - 34°27' N. lat. | 1,000 lb/ 2 months | | | | | |
| 31 | | South of 34°27' N. lat. | 1,500 lb/ 2 months | CLOSED | 1,500 lb/ 2 months | | | |
| 32 | **Minor Nearshore Rockfish & Black rockfish** | | | | | | | |
| 33 | Shallow nearshore | | 1,200 lb/ 2 months | CLOSED | 1,200 lb/ 2 months | | | |
| 34 | Deeper nearshore | | 1,000 lb/ 2 months | CLOSED | 1,000 lb/ 2 months | | | |
| 35 | **California Scorpionfish** | | 1,500 lb/ 2 months | CLOSED | 1,500 lb/ 2 months | | | |
| 36 | **Lingcod[4/]** | | 200 lb/ 2 months | CLOSED | 800 lb/ 2 months | 1,200 lb/ bimonthly | 600 lb/ month | 300 lb/ month |
| 37 | **Pacific cod** | | 1,000 lb/ 2 months | | | | | |
| 38 | **Spiny dogfish** | | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 39 | **Longnose skate** | | Unlimited | | | | | |
| 40 | **Other Fish[5/] & Cabezon** | | Unlimited | | | | | |

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.**

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 06202019

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| **Rockfish Conservation Area (RCA)[1/]:** | | | | | | | |
| 1 | North of 46°16' N. lat. | shoreline - 100 fm line[1/] | | | | | |
| 2 | 46°16' N. lat. - 42°00' N. lat. | 30 fm line[1/] - 100 fm line[1/] | | | | | |
| 3 | 42°00' N. lat. - 40°10' N. lat. | 30 fm line[1/] - 100 fm line[1/] | | | | | |
| **See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | | |
| State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California. | | | | | | | |
| 4 | **Minor Slope Rockfish[2/] & Darkblotched rockfish** | Per trip, no more than 25% of weight of the sablefish landed | | | | | |
| 5 | **Pacific ocean perch** | 100 lb/ month | | | | | |
| 6 | **Sablefish** | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months | 300 lb/day, or 1 landing per week of up to 900 lb, not to exceed 1,800 lb/ 2 months | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months | | | |
| 7 | **Shortpine thornyheads and longspine thornyheads** | CLOSED | | | | | |
| 8 9 | **Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]** | 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs. | | | | | |
| 10 11 12 13 | | South of 42° N. lat., when fishing for "Other Flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 14 | **Whiting** | 300 lb/ month | | | | | |
| 15 | **Minor Shelf Rockfish[2/], Shortbelly rockfish, & Widow rockfish** | 200 lb/ month | | | | | |
| 16 | **Yellowtail rockfish** | 500 lb/ month | | | | | |
| 17 | **Canary rockfish** | 150 lb/ 2 months | | | | | |
| 18 | **Yelloweye rockfish** | CLOSED | | | | | |
| 19 | **Minor Nearshore Rockfish & Black rockfish** | | | | | | |
| 20 | North of 42°00' N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish | | | | | |
| 21 | 42°00' N. lat. - 40°10' N. lat. | 8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish | 7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish | | | | |
| 22 | **Lingcod[5/]** | 100 lb/ month | | 600 lb/ month | 700 lb/ month | | 200 lb/ month |
| 23 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 24 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 25 | **Longnose skate** | Unlimited | | | | | |
| 26 | **Other Fish[6/] & Cabezon in Oregon and California** | Unlimited | | | | | |
| 27 | **SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)* | | | | | | |
| 28 | North | Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here. | | | | | |

TABLE 3 (North)

*Table 3 (North). Continued*

| | | | |
|---|---|---|---|
| *29* | **PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)* | | |
| *30* | North | **Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed. | |

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.**

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 06202017

| | | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|---|
| **Rockfish Conservation Area (RCA)[1/]:** | | | | | | | | |
| 1 | 40°10' N. lat. - 34°27' N. lat. | | 40 fm line[1/] - 125 fm line[1/] | | | | | |
| 2 | South of 34°27' N. lat. | | 75 fm line[1/] - 150 fm line[1/](also applies around islands) | | | | | |
| **See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | | | |
| State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California. | | | | | | | | |
| 3 | **Minor Slope Rockfish[2/] & Darkblotched rockfish** | | 10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish | | | 10,000 lb/ 2 months, of which no more than 550 lb may be blackgill rockfish | | |
| 4 | **Splitnose rockfish** | | 200 lb/ month | | | | | |
| 5 | **Sablefish** | | | | | | | |
| 6 | | 40°10' N. lat. - 36°00' N. lat. | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months | 300 lb/day, or 1 landing per week of up to 900 lb, not to exceed 1,800 lb/ 2 months | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months | | | |
| 7 | | South of 36°00' N. lat. | 300 lb/ day, or 1 landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months | | | | | |
| 8 | **Shortpine thornyheads and longspine thornyheads** | | | | | | | |
| 9 | | 40°10' N. lat. - 34°27' N. lat. | CLOSED | | | | | |
| 10 | | South of 34°27' N. lat. | 50 lb/ day, no more than 1,000 lb/ 2 months | | | | | |
| 11 12 13 14 15 16 | **Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]** | | 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 17 | **Whiting** | | 300 lb/ month | | | | | |
| 18 | **Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper** | | | | | | | |
| 19 | | 40°10' N. lat. - 34°27' N. lat. | 400 lb/ 2 months | CLOSED | 400 lb/ 2 months | | | |
| 20 | | South of 34°27' N. lat. | 1,500 lb/ 2 months | | 1,500 lb/ 2 months | | | |
| 21 | **Canary rockfish** | | 150 lb/ 2 months | | | | | |
| 22 | **Yelloweye rockfish** | | CLOSED | | | | | |
| 23 | **Cowcod** | | CLOSED | | | | | |
| 24 | **Bronzespotted rockfish** | | CLOSED | | | | | |
| 25 | **Bocaccio** | | 500 lb/ 2 months | CLOSED | 500 lb/ 2 months | | | |
| 26 | **Minor Nearshore Rockfish & Black rockfish** | | | | | | | |
| 27 | Shallow nearshore | | 1,200 lb/ 2 months | CLOSED | 1,200 lb/ 2 months | | | |
| 28 | Deeper nearshore | | 1,000 lb/ 2 months | CLOSED | 1,000 lb/ 2 months | | | |
| 29 | California scorpionfish | | 1,500 lb/ 2 months | CLOSED | 1,500 lb/ 2 months | | | |
| 30 | **Lingcod[4/]** | | 100 lb/ month | CLOSED | 400 lb/ month | 600 lb/ month | 400 lb/ month | 150 lb/ month |
| 31 | **Pacific cod** | | 1,000 lb/ 2 months | | | | | |
| 32 | **Spiny dogfish** | | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 33 | **Longnose skate** | | Unlimited | | | | | |
| 34 | **Other Fish[5/] & Cabezon** | | Unlimited | | | | | |

TABLE 3 (South)

*Table 3 (South). Continued*

TABLE 3 (South) cont'd

| | | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|---|
| 35 | **RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL** | | | | | | | |
| 36 | **NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:** | | | | | | | |
| 37 | | *40° 10' N. lat. - 38° 00' N. lat.* | *100 fm line 1/ - 200 fm line 1/* | *100 fm line 1/ - 150 fm line 1/* | | | | *100 fm line 1/ - 200 fm line 1/* |
| 38 | | *38° 00' N. lat. - 34° 27' N. lat.* | *100 fm line 1/ - 150 fm line 1/* | | | | | |
| 37 | | *South of 34° 27' N. lat.* | *100 fm line 1/ - 150 fm line 1/ along the mainland coast; shoreline - 150 fm line 1/ around islands* | | | | | |
| 39 | | | Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31). | | | | | |
| 40 | **PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)* | | | | | | | |
| 41 | | South | Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed. | | | | | |

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and includes kelp greenling, leopard shark, and cabezon in Washington.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

[FR Doc. 2017–14313 Filed 7–3–17; 4:15 pm]

**BILLING CODE 3510–22–C**

# Proposed Rules

Federal Register
Vol. 82, No. 129
Friday, July 7, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**[NRC–2016–0138]**

**RIN 3150–AJ78**

## List of Approved Spent Fuel Storage Casks: EnergySolutions™ Corporation, VSC–24 Ventilated Storage Cask System, Renewal of Initial Certificate and Amendment Nos. 1–6

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the EnergySolutions™ Corporation's (EnergySolutions or the applicant) VSC–24 Ventilated Storage Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1–6 of Certificate of Compliance (CoC) No. 1007. The renewal of the initial certificate and Amendment Nos. 1–6 requires cask users to establish, implement, and maintain written procedures for aging management program (AMP) elements, including a lead cask inspection program, for VSC–24 Storage Cask structures, systems, and components (SSCs) important to safety. Users must also conduct periodic ''tollgate'' assessments of new information on SSC aging effects and mechanisms to determine whether any element of an AMP addressing these effects and mechanisms requires revision to encompass the current state of knowledge. In addition, the renewal of the initial certificate and Amendment Nos. 1–6 makes several other changes, described in Section IV, ''Discussion of Changes,'' in the **SUPPLEMENTARY INFORMATION** section of the companion direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

**DATES:** Submit comments by August 7, 2017. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**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–2016–0138. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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:** Robert D. MacDougall, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5175; email: *Robert.MacDougall@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Plain Writing
V. Availability of Documents

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2016–0138 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0138.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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–2016–0138 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 will post all comment submissions at *http://www.regulations.gov* as well as enter 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 into ADAMS.

## II. Rulemaking Procedure

This proposed rule is limited to the renewal of the initial certificate and Amendment Nos. 1–6 of CoC No. 1007.

Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured.

The direct final rule will become effective on September 20, 2017. However, if the NRC receives significant adverse comments on this proposed rule by August 7, 2017, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or technical specifications.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

## III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). A general license authorizes a reactor licensee to store spent fuel in NRC-approved casks at a site that is licensed to operate a power reactor under 10 CFR parts 50 or 52. This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17967), that approved the VSC–24 Cask System design effective May 7, 1993, and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1007.

## IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

## V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| Document | ADAMS Accession No./ **Federal Register** Citation |
|---|---|
| Proposed CoC No. 1007 Renewal, Initial Issuance | ML16057A127 |
| Proposed Technical Specification (TS), Attachment A, CoC No. 1007 Renewal, Initial Issuance | ML16057A139 |
| Proposed CoC No. 1007 Renewal, Amendment 1 | ML16057A189 |
| Proposed TS, Attachment A, Amendment 1 | ML16057A211 |
| Proposed CoC No. 1007 Renewal, Amendment 2 | ML16057A216 |
| Proposed TS, Attachment A, Amendment 2 | ML16057A322 |
| Proposed CoC No. 1007 Renewal, Amendment 3 | ML16057A333 |
| Proposed TS, Attachment A, Amendment 3 | ML16057A358 |
| Proposed CoC No. 1007 Renewal, Amendment 4 | ML16057A449 |
| Proposed TS, Attachment A, Amendment 4 | ML16057A511 |
| Proposed CoC No. 1007 Renewal, Amendment 5 | ML16057A593 |
| Proposed TS, Attachment A, Amendment 5 | ML16057A600 |
| Proposed CoC No. 1007 Renewal, Amendment 6 | ML16057A617 |
| Proposed TS, Attachment A, Amendment 6 | ML16057A630 |
| Preliminary Safety Evaluation Report | ML16057A667 |
| Final Safety Analysis Report for the VSC–24 Ventilated Storage Cask System | ML060810682 |
| NUREG–1092, ''Environmental Assessment for 10 CFR Part 72—Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste''. | ML091050510 |

| Document | ADAMS Accession No./ **Federal Register** Citation |
|---|---|
| Proposed Rule, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste''. | 51 FR 19106 |
| Environmental Assessment and Finding of No Significant Impact for Proposed Rule Entitled ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites''. | 54 FR 19379 |
| Final Rule, ''Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites'' | 55 FR 29181 |
| Final Rule, ''License and Certificate of Compliance Terms'' | 76 FR 8872 |

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2016–0138. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0138); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

**List of Subjects in 10 CFR Part 72**

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

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

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

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

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

■ 2. In § 72.214, Certificate of Compliance 1007 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

*Certificate Number:* 1007.

*Initial Certificate Effective Date:* May 7, 1993, superseded by Renewed Initial Certificate, on September 20, 2017.

*Renewed Initial Certificate Effective Date:* September 20, 2017.

*Amendment Number 1 Effective Date:* May 30, 2000, superseded by Renewed Amendment Number 1, on September 20, 2017.

*Renewed Amendment Number 1 Effective Date:* September 20, 2017.

*Amendment Number 2 Effective Date:* September 5, 2000, superseded by Renewed Amendment Number 2, on September 20, 2017.

*Renewed Amendment Number 2 Effective Date:* September 20, 2017.

*Amendment Number 3 Effective Date:* May 21, 2001, superseded by Renewed Amendment Number 3, on September 20, 2017.

*Renewed Amendment Number 3 Effective Date:* September 20, 2017.

*Amendment Number 4 Effective Date:* February 3, 2003, superseded by Renewed Amendment Number 4, on September 20, 2017.

*Renewed Amendment Number 4 Effective Date:* September 20, 2017.

*Amendment Number 5 Effective Date:* September 13, 2005, superseded by Renewed Amendment Number 5, on September 20, 2017.

*Renewed Amendment Number 5 Effective Date:* September 20, 2017.

*Amendment Number 6 Effective Date:* June 5, 2006, superseded by Renewed Amendment Number 6, on September 20, 2017.

*Renewed Amendment Number 6 Effective Date:* September 20, 2017.

*SAR Submitted by:* EnergySolutions™ Corporation.

*SAR Title:* Final Safety Analysis Report for the VSC–24 Ventilated Storage Cask System.

*Docket Number:* 72–1007.

*Renewed Certificate Expiration Date:* May 7, 2053.

*Model Number:* VSC–24.

* * * * *

Dated at Rockville, Maryland, this 31st day of May 2017.

For the Nuclear Regulatory Commission.

**Michael R. Johnson,**

*Acting Executive Director for Operations.*

[FR Doc. 2017–14290 Filed 7–6–17; 8:45 am]

**BILLING CODE 7590–01–P**

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1282

**RIN 2590–AA81**

### 2018–2020 Enterprise Housing Goals

*Correction*

Proposed Rule document 2017–14039 appearing on pages 31009 through 31030 in the issue of Wednesday, July 5, 2017 was withdrawn from public inspection and published in error. It should be removed.

[FR Doc. C1–2017–14039 Filed 7–6–17; 8:45 am]

**BILLING CODE 1301–00–D**

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1282

**RIN 2590–AA81**

### 2018–2020 Enterprise Housing Goals

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing a proposed rule with request for comments on the housing goals for Fannie Mae and Freddie Mac (the Enterprises) for 2018 through 2020. The Federal Housing Enterprises Financial Safety and

Soundness Act of 1992 (the Safety and Soundness Act) requires FHFA to establish annual housing goals for mortgages purchased by the Enterprises. The housing goals include separate categories for single-family and multifamily mortgages on housing that is affordable to low-income and very low-income families, among other categories.

The existing housing goals for the Enterprises include benchmark levels for each housing goal through the end of 2017. This proposed rule would establish benchmark levels for each of the housing goals and subgoals for 2018 through 2020. In addition, the proposed rule would make a number of clarifying and conforming changes, including revisions to the requirements for the housing plan that an Enterprise may be required to submit in response to a failure to achieve one or more of the housing goals.

**DATES:** FHFA will accept written comments on the proposed rule on or before September 5, 2017.

**ADDRESSES:** You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA81, by any one of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA81.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA81, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA81, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

**FOR FURTHER INFORMATION CONTACT:** Ted Wartell, Manager, Housing & Community Investment, Division of Housing Mission and Goals, at (202) 649–3157. This is not a toll-free number. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing the final rule. Copies of all comments will be posted without change, including any personal information you provide such as your name, address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

Commenters are encouraged to review and comment on all aspects of the proposed rule, including the single-family benchmark levels, the multifamily benchmark levels, and other changes to the regulation.

## II. Background

### *A. Statutory and Regulatory Background for the Existing Housing Goals*

The Safety and Soundness Act requires FHFA to establish annual housing goals for several categories of both single-family and multifamily mortgages purchased by Fannie Mae and Freddie Mac.[1] The annual housing goals are one measure of the extent to which the Enterprises are meeting their public purposes, which include ''an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return.'' [2]

The housing goals provisions of the Safety and Soundness Act were substantially revised in 2008 with the enactment of the Housing and Economic Recovery Act, which amended the Safety and Soundness Act.[3] Under this revised structure, FHFA established housing goals for the Enterprises for 2010 and 2011 in a final rule published on September 14, 2010.[4] FHFA established housing goals levels for the Enterprises for 2012 through 2014 in a final rule published on November 13, 2012.[5] In a final rule published on September 3, 2015, FHFA announced the housing goals for the Enterprises for 2015 through 2017, including a new small multifamily low-income housing subgoal.[6]

*Single-family goals.* The single-family goals defined under the Safety and Soundness Act include separate categories for home purchase mortgages for low-income families, very low-income families, and families that reside in low-income areas. Performance on the single-family home purchase goals is measured as the percentage of the total home purchase mortgages purchased by an Enterprise each year that qualify for each goal or subgoal. There is also a separate goal for refinancing mortgages for low-income families, and performance on the refinancing goal is determined in a similar way.

Under the Safety and Soundness Act, the single-family housing goals are limited to mortgages on owner-occupied housing with one to four units total. The single-family goals cover conventional, conforming mortgages, defined as mortgages that are not insured or guaranteed by the Federal Housing Administration (FHA) or another government agency and with principal balances that do not exceed the loan limits for Enterprise mortgages.

*Two-part approach.* The performance of the Enterprises on the housing goals is evaluated using a two-part approach, which compares the goal-qualifying share of the Enterprise's mortgage purchases to two separate measures: A benchmark level and a market level. FHFA considered alternatives to this method in the 2015–2017 housing goals rulemaking and determined that the two-part approach continued to be the most appropriate method for evaluating performance on the single-family goals. FHFA is proposing to continue that approach in this rule.

In order to meet a single-family housing goal or subgoal, the percentage of mortgage purchases by an Enterprise that meet each goal or subgoal must exceed either the benchmark level or the market level for that year. The

[1] *See* 12 U.S.C. 4561(a).

[2] *See* 12 U.S.C. 4501(7).

[3] Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (July 30, 2008).

[4] *See* 75 FR 55892.

[5] *See* 77 FR 67535.

[6] *See* 80 FR 53392.

benchmark level is set prospectively by rulemaking based on various factors, including FHFA's forecast of the goal-qualifying share of the overall market. The market level is determined retrospectively each year, based on the actual goal-qualifying share of the overall market as measured by FHFA based on Home Mortgage Disclosure Act (HMDA) data for that year. The overall mortgage market that FHFA uses for both the prospective market forecasts and the retrospective market measurement consists of all single-family owner-occupied conventional conforming mortgages that would be eligible for purchase by either Enterprise. It includes loans actually purchased by the Enterprises as well as comparable loans held in a lender's portfolio. It also includes comparable loans that are part of a private label security (PLS), although very few such securities have been issued for conventional conforming mortgages since 2008.

While both the benchmark and the retrospective market measure are designed to measure the current year's mortgage originations, the performance of the Enterprises on the housing goals includes all Enterprise purchases in that year, regardless of the year in which the loan was originated. This provides housing goals credit when the Enterprises acquire qualified seasoned loans. (Seasoned loans are loans that were originated in prior years and acquired by the Enterprise in the current year.) The Enterprises' acquisition of seasoned loans provides an important source of liquidity for this market segment.

Recent changes to the HMDA regulations will result in the HMDA data covering a greater portion of the single-family mortgage market.[7] The changes will also provide more detailed information about the loans included in the HMDA data. The changes to the HMDA regulations generally take effect at the start of 2018, so the new, more detailed information will not be available until after the 2018 performance year.

For example, the Enterprise housing goals currently count all loans purchased by an Enterprise with original principal balances that are within the conforming loan limits. The conforming loan limits are different for single-family properties depending on the number of units in the property. However, the definition of the retrospective market excludes all loans with original principal balances above the conforming loan limits for single unit properties because the current HMDA data do not identify the number of units for each loan. Starting with the new HMDA data reported, it will be possible to identify the number of units for each loan. This may allow FHFA to revise the definition of the retrospective market to exclude only those loans above the conforming loan limits applicable to the size of the property, instead of excluding all loans above the conforming loan limit applicable to a single unit property.

FHFA has considered the possible impact that certain changes to the HMDA regulations may have on the Enterprise housing goals. However, at this time the impact that such changes might have on the retrospective measure of the market is uncertain. FHFA is not proposing to make any changes to the Enterprise housing goals in anticipation of the upcoming changes to the HMDA data. FHFA will assess the impact of the changes and, if necessary, may propose changes to the housing goals regulation at a later date.

*Multifamily goals.* The multifamily goals defined under the Safety and Soundness Act include separate categories for mortgages on multifamily properties (properties with five or more units) with rental units affordable to low-income families and on multifamily properties with rental units affordable to very low-income families, as well as a small multifamily low-income subgoal for properties with 5–50 units. The multifamily goals established by FHFA in 2010, 2012, and 2015 evaluated the performance of the Enterprises based on numeric targets, not percentages, for the number of affordable units in properties backed by mortgages purchased by an Enterprise. FHFA has not established a retrospective market level measure for the multifamily goals and subgoals, due in part to a lack of comprehensive data about the multifamily market such as that provided by HMDA for single-family mortgages. As a result, FHFA currently measures Enterprise multifamily goals performance against the benchmark levels only. The expanded HMDA fields that will be available for the 2018 performance year are expected to include information on the number of units for each multifamily loan and should be helpful in evaluating performance for this market segment.

### *B. Adjusting the Housing Goals*

Under the housing goals regulation first established by FHFA in 2010, as well as under this proposed rule, FHFA may reduce the benchmark levels for any of the single-family or multifamily housing goals in a particular year without going through notice and comment rulemaking based on a determination by FHFA that (1) market and economic conditions or the financial condition of the Enterprise require a reduction, or (2) ''efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Charter Acts.'' [8] The proposal also takes into account the possibility that achievement of a particular housing goal may or may not have been feasible for the Enterprise. If FHFA determines that a housing goal was not feasible for the Enterprise to achieve, then the regulation provides for no further enforcement of that housing goal for that year.[9]

If, after publication of a final rule establishing the housing goals for 2018 through 2020, FHFA determines that any of the single-family or multifamily housing goals should be adjusted in light of market conditions, to ensure the safety and soundness of the Enterprises, or for any other reason, FHFA will take steps as necessary and appropriate to adjust that goal. Such steps could include adjusting the benchmark levels through the processes in the existing regulation or establishing revised housing goal levels through notice and comment rulemaking.

### *C. Housing Goals Under Conservatorship*

On September 6, 2008, FHFA placed each Enterprise into conservatorship. Although the Enterprises remain in conservatorship at this time, they continue to have the mission of supporting a stable and liquid national market for residential mortgage financing. FHFA has continued to establish annual housing goals for the Enterprises and to assess their performance under the housing goals each year during conservatorship.

## III. Summary of Proposed Rule

### *A. Benchmark Levels for the Single-Family Housing Goals*

This proposed rule would establish the benchmark levels for the single-family housing goals and subgoal for 2018–2020 as follows:

[7] *See* Home Mortgage Disclosure Act final rule, 80 FR 66128 (Oct. 28, 2015).

[8] 12 CFR 1282.14(d).

[9] 12 CFR 1282.21(a).

| Goal | Criteria | Current benchmark level for 2015–2017 | Proposed benchmark level for 2018–2020 |
|---|---|---|---|
| Low-Income Home Purchase Goal .. | Home purchase mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 80 percent of area median income. | 24 percent ..... | 24 percent. |
| Very Low-Income Home Purchase Goal. | Home purchase mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 50 percent of area median income. | 6 percent ..... | 6 percent. |
| Low-Income Areas Home Purchase Subgoal. | Home purchase mortgages on single-family, owner-occupied properties with:. • Borrowers in census tracts with tract median income of no greater than 80 percent of area median income; or. • Borrowers with income no greater than 100 percent of area median income in census tracts where (i) tract income is less than 100 percent of area median income, and (ii) minorities comprise at least 30 percent of the tract population. | 14 percent ..... | 15 percent. |
| Low-Income Refinancing Goal ..... | Refinancing mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 80 percent of area median income. | 21 percent ..... | 21 percent. |

*B. Multifamily Housing Goal Levels*

The proposed rule would establish the levels for the multifamily goal and subgoals for 2018–2020 as follows:

| Goal | Criteria | Current goal level for 2017 | Proposed goal level for 2018–2020 |
|---|---|---|---|
| Low-Income Goal ..... | Units affordable to families with incomes no greater than 80 percent of area median income in multifamily rental properties with mortgages purchased by an Enterprise. | 300,000 units | 315,000 units. |
| Very Low-Income Subgoal ..... | Units affordable to families with incomes no greater than 50 percent of area median income in multifamily rental properties with mortgages purchased by an Enterprise. | 60,000 units .. | 60,000 units. |
| Low-Income Small Multifamily Subgoal. | Units affordable to families with incomes no greater than 80 percent of area median income in small multifamily rental properties (5 to 50 units) with mortgages purchased by an Enterprise. | 10,000 units .. | 10,000 units. |

*C. Other Proposed Changes*

The proposed rule would make changes and clarifications to the existing rules, including minor technical changes to some regulatory definitions. The proposed rule also would revise the requirements applicable to the housing plan an Enterprise may be required to submit based on a failure to achieve one or more of the housing goals.

## IV. Single-Family Housing Goals

This proposed rule sets out FHFA's views about benchmark levels for the single-family housing goals from 2018–2020. In making this proposal, FHFA has considered the required statutory factors described below. FHFA's analysis and goal setting process includes developing market forecast models for each of the single-family housing goals, as well as considering a number of other variables that impact affordable homeownership. Many of these variables indicate that low-income and very low-income households are facing, and will continue to face, difficulties in achieving homeownership or in refinancing an existing mortgage. These factors, such as rising property values and stagnant household incomes, also impact the Enterprises' ability to meet their mission and facilitate affordable homeownership for low-income and very low-income households. Nevertheless, FHFA expects and encourages the Enterprises to work toward meeting their housing goal requirements in a safe and sound manner. This may include steps the Enterprises take to fulfill FHFA's access to credit expectations expressed in the most recent Conservatorship Scorecard, which requires the Enterprises to undertake a number of research and related efforts including the development of pilots and initiatives.[10]

[10] See *2017 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions,* December 2016, available at *https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2017-Scorecard-for-Fannie-Mae-Freddie-Mac-and-CSS.pdf.*

*A. Setting the Single-Family Housing Goal Levels*

FHFA Process for Setting the Single-Family Benchmark Levels

Section 1332(e)(2) of the Safety and Soundness Act requires FHFA to consider the following seven factors in setting the single-family housing goals:

1. National housing needs;

2. Economic, housing, and demographic conditions, including expected market developments;

3. The performance and effort of the Enterprises toward achieving the housing goals in previous years;

4. The ability of the Enterprises to lead the industry in making mortgage credit available;

5. Such other reliable mortgage data as may be available;

6. The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase

money mortgage market or the overall refinance mortgage market, respectively; and

7. The need to maintain the sound financial condition of the Enterprises.[11]

FHFA has considered each of these seven statutory factors in setting the proposed benchmark levels for each of the single-family housing goals and subgoal.

Recognizing that some of the factors required by statute to be considered can be readily captured using reliable data series while others cannot, FHFA implemented the following approach: FHFA's statistical market models considered factors that are captured through well-known and established data series and these are then used to generate a point forecast for each goal as well as a confidence interval for the point forecast. FHFA then considered the remaining statutory factors, as well as other relevant policy factors, in selecting the specific point forecast within the confidence interval as the proposed benchmark level. FHFA's market forecast models incorporate four of the seven statutory factors: National housing needs; economic, housing, and demographic conditions; other reliable mortgage data; and the size of the purchase money conventional mortgage market or refinance conventional mortgage market for each single-family housing goal. The market forecast models generate a point estimate, as well as a confidence interval. FHFA then considered the remaining three statutory factors (historical performance and effort of the Enterprises toward achieving the housing goal; ability of the Enterprises to lead the industry in making mortgage credit available; and need to maintain the sound financial condition of the Enterprises), as well as other relevant policy factors in selecting the specific point forecast within the confidence interval as the proposed benchmark level for the goal period.

*Market forecast models.* The purpose of FHFA's market forecast models is to forecast the market share of the goal-qualifying mortgage originations in the market for the 2018–2020 period. The models are intended to generate reliable forecasts rather than to test various economic hypotheses about the housing market or to explain the relationship between variables. Following standard practice among forecasters and economists at other federal agencies, FHFA estimated a reduced-form equation for each of the housing goals and fit an Autoregressive Integrated Moving Average (or ARIMA) model to each goal share. The models look at the statistical relationship between (a) the historical market share for each single-family housing goal or subgoal, as calculated from monthly HMDA data, and (b) the historical values for various factors that may influence the market shares, *e.g.,* interest rates, inflation, house prices, home sales, the unemployment rate, and other factors. The models then project the future value of the affordable market share using forecast values of the model inputs. Separate models were developed for each of the single-family housing goals and subgoals.

FHFA has employed similar models in past housing goals rulemakings to generate market forecasts. The models were developed using monthly series generated from HMDA and other data sources, and the resulting monthly forecasts were then averaged into an annual forecast for each of the three years in the goal period. The models rely on 12 years of HMDA data, from 2004 to 2015, the latest year for which HMDA data are available. Additional discussion of the market forecast models can be found in a research paper, available at *http://www.fhfa.gov/PolicyProgramsResearch/Research/*.[12]

In the final rule establishing the housing goals for 2015–2017, FHFA stated that it would engage directly with commenters to obtain detailed feedback on FHFA's econometric models for the housing goals. Throughout 2016, FHFA met with industry modeling experts about potential improvements to the econometric models. Considering input received, FHFA has revised the market forecast models to include better specifications and new variables for all goal-qualifying shares, while still following and adhering to generally accepted practices and standards adopted by economists, including those at other federal agencies. During the model development process, FHFA grouped factors that are expected by housing market economists to have an impact on the market share of affordable housing into seven broad categories. For each category of variables, many variables were tested but only retained when they exhibited predictive power. The new set of models includes new driver variables that reflect factors that impact the affordable housing market—for example, household debt service ratio, labor force participation rate, and underwriting standards.

As is the case with any forecasting model, the accuracy of the forecast will vary depending on the accuracy of the inputs to the model and the length of the forecast period. FHFA has attempted to minimize the first variable by using third party forecasts published by Moody's and other accredited mortgage market forecasters. The second variable is harder to address. The proposed rule relies on the most up-to-date data available as of December 2016, and uses forecasted input values for 2017 to produce the forecasts for 2018–2020. The confidence intervals for the benchmark levels become wider as the forecast period lengthens. In other words, it becomes more likely that the actual market levels will be different from the forecasts the farther into the future the forecasts attempt to make predictions. Predicting four years out is not the usual practice in forecasting. A number of industry forecasters, including Fannie Mae, Freddie Mac, and the Mortgage Bankers Association (MBA), do not publish forecasts beyond two years because accuracy of forecasts decreases substantially beyond a two year period.

*Market outlook.* There are many factors that impact the affordable housing market as a whole, and changes to any one of them may significantly impact the ability of the Enterprises to meet the goals. In developing our market models, FHFA used Moody's forecasts, where available, as the source for macroeconomic variables.[13] In cases where Moody's forecasts were not available (for example, the share of government-guaranteed home purchases and the share of government-guaranteed refinances), FHFA generated and tested its own forecasts.[14] Elements that impact the models and the determination of benchmark levels are discussed below.

Interest rates are arguably one of the most important variables in determining the trajectory of the mortgage market. The Federal Reserve launched its interest rate normalization process in December 2015 with a 0.25-percentage point increase. At the July 2016 meeting of the Federal Open Market Committee (FOMC), policymakers indicated their commitment to a low federal funds rate for the time being, signaling a pause in the interest rate normalization path. However, there is broad consensus among economists that the Federal Reserve will resume rate hikes if the economy performs as expected. Based

[11] 12 U.S.C. 4562(e)(2).

[12] Details on FHFA's single-family market models will be available in the technical paper ''The Size of the Affordable Mortgage Market: 2018–2020 Enterprise Single-Family Housing Goals.''

[13] The macroeconomic outlook described here is based on Moody's and other forecasts as of September 2016.

[14] This refers to the mortgages insured/guaranteed by government agencies such as the FHA, Department of Veterans Affairs (VA), and the Rural Housing Service (RHS).

on Moody's January 2017 forecast, mortgage interest rates—in particular the 30-year fixed rate, which is closely tied to the federal funds rate and the 10-year Treasury note yield—are projected to rise gradually from the current historic low of 3.6 percent in 2016 to 5.5 percent by 2020.

The unemployment rate has steadily fallen over the last few years and according to Moody's is expected to remain at 4.7 percent over the next four years, given expected growth of the economy at the modest range of 1.5 to 2.9 percent per year (January 2017 forecast). Moody's also forecasts a modest increase in per capita disposable nominal income growth—from $43,100 in 2016 to $50,300 in 2020. Moody's estimates that the inflation rate will remain flat at 2.0 percent throughout the same period, although this also depends on Federal Reserve policy.

Industry analysts generally expect the overall housing market to continue its recovery, although the growth of house prices may slow down, assuming continued increases in interest rates. According to Moody's forecast (as of January 2017) based on FHFA's purchase-only House Price Index (HPI), house prices are expected to increase at the annual rates of 3.9, 1.8, and 2.0 percent in 2018, 2019, and 2020, respectively.

The expected increase in mortgage interest rates and house prices will likely impact the ability of low- and very low-income households to purchase homes. Housing affordability, as measured by Moody's forecast of the National Association of Realtors' Housing Affordability Index, is projected to decline from an index value of 162.2 in 2016 to 152.5 in 2020. Low interest rates coupled with rising house prices usually create incentives for homeowners to refinance, and the refinance share of overall mortgage originations increased from 39.9 percent in 2014 to 50 percent in 2016. However, assuming that interest rates rise in the near future, the refinance rate is expected to fall below 21.4 percent by 2019, according to the Moody's forecast.

Additional Factors Reflecting Affordability Challenges in the Single-Family Market

While FHFA's models can address and forecast many of the statutory factors that can make affordability for single-family homeownership more challenging for low-income and very low-income households, including increasing interest rates and rising property values, some factors are not captured in the models. FHFA, therefore, considers additional factors when selecting the benchmark point within the model-generated confidence interval for each of the single-family housing goals. Some of these factors may affect a subset of the market rather than the market as a whole. Some of these additional factors include an uneven economic recovery, stagnant wages even where unemployment is decreasing, demographic trends, and the Enterprises' share of the mortgage market. Variability in these factors can also have substantial impacts on the ability of the Enterprises to meet housing goals. Consequently, as discussed further below, FHFA will carefully monitor these factors and consider the potential impact of market shifts or larger trends on the ability of the Enterprises to achieve the housing goals.

Throughout 2016, the economy and the housing market continued to recover from the financial crisis, but the recovery has been uneven across the country. In some areas, economic growth, job gains, and demand are outpacing housing supply, sparking rapidly rising property values, while other areas of the country have not regained pre-crisis home values and are not projected to do so in the near future.

Trends in factors such as area median income (AMI) point to an uneven recovery. FHFA uses census-tract level AMIs published by the U.S. Department of Housing and Urban Development (HUD) to determine affordability for the Enterprise single-family and multifamily mortgage acquisitions. AMI is a measure of median family income derived from the Census Bureau's American Community Survey (ACS). Since the 1990s, AMIs have been used widely by HUD, state housing finance agencies, the Federal Deposit Insurance Corporation (FDIC), the U.S. Department of Treasury, and local governments across the nation to determine eligibility for various affordable housing and public assistance programs. The HUD-published AMIs are considered the standard benchmark in the affordable housing industry. HUD changed the methodology for determining AMIs in 2015 because of changes in the Census Bureau's data collection methodology and changes in the reporting schedules of the ACS data.

AMI shifts reflect changes in borrower income levels at the census tract level. In general, a decrease in an area's AMI represents a decline in housing affordability in the area because the households will have relatively less income with which to purchase a home where property values have either remained the same or increased during the same time period.[15] This can make it more challenging for the Enterprises to meet the housing goals. Conversely, increases in AMIs would make it easier for the Enterprises to meet the housing goals. Overall, while there are annual fluctuations in AMI, the trends over a longer period (for instance, over four years) indicate that the economy is recovering, albeit in an uneven manner. For instance, from 2014 to 2016, over 80 percent of census tracts experienced an AMI increase. Over the four-year period from 2012 to 2016, AMI increased in about 51 percent of census tracts. This unevenness of the economic recovery is particularly evident geographically. For instance, the census tracts that experienced more than a 10 percent decline in AMIs in 2016 are concentrated in the southern and midwestern regions of the country.

In addition to the uneven recovery reflected in changing AMI levels, many households have experienced stagnant wages or limited wage growth even though unemployment levels have decreased significantly since the peak of the financial crisis. Data released by the U.S. Census Bureau last year for the most recent year available reflected that while median household income increased by 5.2 percent in 2015, the first annual increase in median household income since 2007, median wages remained 1.6 percent lower than the median in 2007, the year before the most recent recession, and 2.4 percent lower than the median household income peak that occurred in 1999.[16] Constrained wages, in addition to rising interest rates and increasing property values, could make it difficult for many low-income and very low-income households to achieve homeownership.

Demographic changes, such as the housing patterns of millennials or the growth of minority households, also reflect challenges in the affordable homeownership market. The homeownership rate among millennials is lower than other demographic groups, but household formation will likely increase as this group ages. However, many millennials will face multiple challenges, including difficulty finding affordable homes to buy and building enough wealth for a down payment and closing costs, particularly in light of

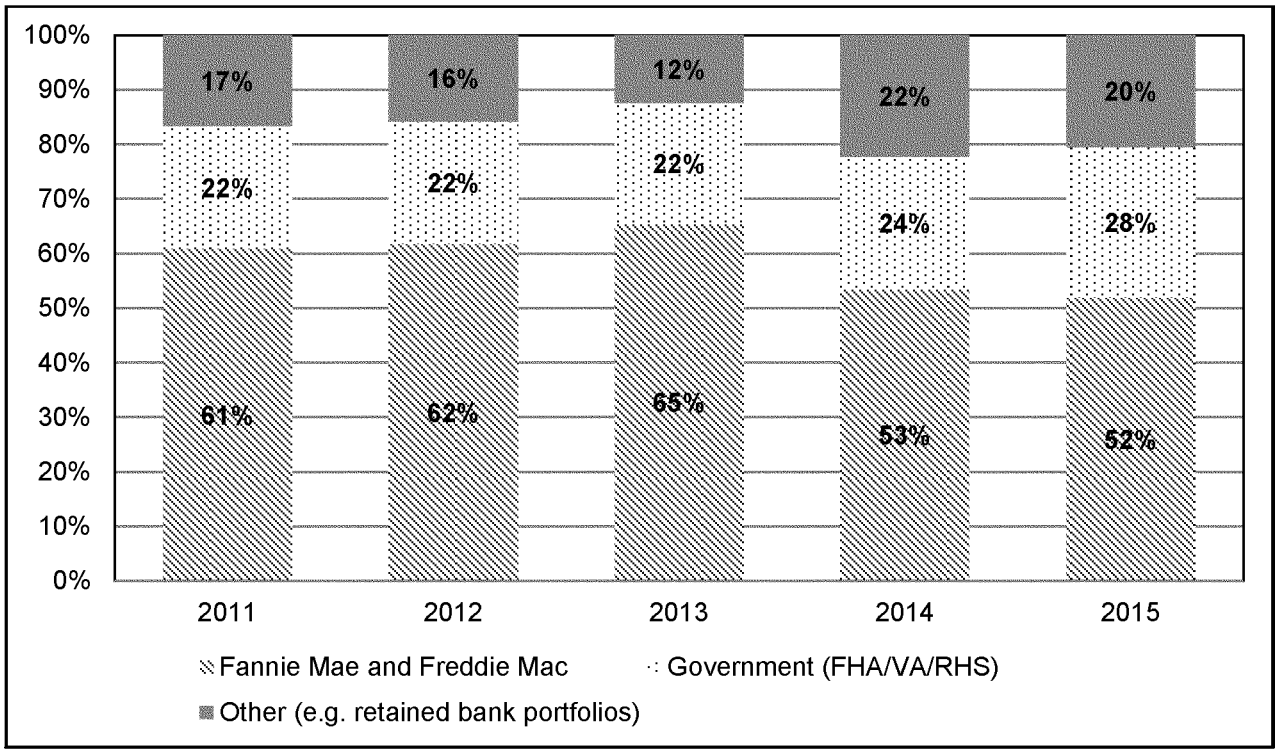
[15] The supply of single-family homes at the more affordable end of the market also impacts a low-income or very low-income household's ability to purchase a home. See *The State of the Nation's Housing 2017,* Joint Center on Housing Studies, June 2017.

[16] See *Income and Poverty in the United States: 2015,* United States Census Bureau, September 2016 *https://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf.*

student loan and other debt burdens. In addition, another continuing demographic trend is the growth of minority households, which is projected to be over 70 percent of net household growth through 2025.[17] In light of the fact that the median net worth of minority households has been historically low, building the necessary wealth to meet down payment and closing costs will likely also be a challenge for many of these new households. FHFA is committed to identifying new market conditions and challenges and working with the Enterprises to identify solutions to help meet these challenges. The effectiveness of these solutions, however, cannot be accounted for in a model.

Another factor that can affect the Enterprises' ability to support affordable homeownership for low-income and very low-income households is the Enterprises' overall share of the mortgage market. The Enterprises' share of the market is continually subject to fluctuation. During the mortgage market bubble, the Enterprises' share of the market dropped to about 46 percent in the last quarter of 2005. The other significant low point occurred in 2008, when the Enterprises' acquisitions accounted for less than 45 percent of the mortgage market. Since then, the Enterprises' share has risen overall but declined slightly in recent years, accounting for about 52 percent of the market in 2015. As shown in Graph 1, over the same time period, the total government share of the mortgage market (including FHA, VA, and RHS) has been expanding. In 2015, the total government share accounted for 28 percent of overall mortgage originations, up from 24 percent in 2014. This is likely an impact of the FHA mortgage insurance premium reduction announced in January 2015. As seen in Graph 1, the increase in government share came from decreases in the other two segments.

**Graph 1: Distribution of Mortgage Originations by Market Segment**




Source: HMDA Plus, Fannie Mae, Freddie Mac, FHA, VA, and RHS

Both Enterprises' charter acts require that all mortgages the Enterprises acquire have mortgage insurance (or one of the other forms of credit enhancement specified in the charter acts) if the loan-to-value (LTV) ratio for the loan at acquisition is greater than 80 percent. Private mortgage insurance rates are dependent on characteristics of the mortgage such as loan term, type of mortgage (purchase, type of refinance), LTV ratio, and credit score of the borrower. Lenders may also be able to negotiate and obtain lower private mortgage insurance directly from the mortgage insurer. Therefore, for certain market segments, the choice between government mortgage insurance or private mortgage insurance depends on the net impact of these factors.

In recent years private mortgage insurance rates have increased relative to government mortgage insurance rates, but the increase has not been uniform across the credit score and LTV spectrum. Changes in the mortgage insurance market can impact the cost of mortgage insurance and, consequently, may influence whether the mortgage is originated with private mortgage insurance or with FHA insurance. For example, FHA decreased its rates for mortgage insurance from 1.35 percent to 0.85 percent in January 2015. If FHA decreased or increased its mortgage insurance premiums, it would be

[17] Daniel McCue, Christopher Herbert, *Working Paper: Updated Household Projections, 2015–2035: Methodology and Results,* Harvard Joint Center for Housing Studies, December 2016.

reasonable to expect further shifts in the market that would not be uniform across the credit score and LTV spectrum. Reductions in the FHA insurance premium are likely to have two impacts on the conforming segment of the market: (1) The substitution effect—some borrowers will switch from private mortgage insurance to FHA insurance due to the lower premium rate; and (2) the expanded homeownership effect—new borrowers, especially those with lower credit scores seeking higher LTV loans, will enter the mortgage market because they are now able to meet the debt-to-income threshold due to the lower monthly mortgage payment. Analysis conducted by Federal Reserve Board staff indicates that both effects existed after the last FHA reduction.[18] Increases in FHA premiums would likely result in reverse shifts.

As discussed above, multiple factors impact the Enterprises' ability to meet their mission and support affordable homeownership through the housing finance market. Nevertheless, FHFA expects the Enterprises to continue efforts in a safe and sound manner to support affordable homeownership under the single-family housing goals categories.

*B. Proposed Single-Family Benchmark Levels*

1. Low-Income Home Purchase Goal

The low-income home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less than or equal to 80 percent of AMI. The proposed rule would set the annual low-income home purchase housing goal benchmark level for 2018–2020 at 24 percent, the same as the current 2015–2017 benchmark level. FHFA believes that, despite the various challenges to affordability highlighted above, the Enterprises will be able to take steps to maintain or increase their performance on this goal.

TABLE 1—ENTERPRISE LOW-INCOME HOME PURCHASE GOAL

| Year | Historical performance | | | | Projected performance | | | |
|---|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| Actual Market | 24.0% | 22.8% | 23.6% | | | | | |
| Benchmark | 23% | 23% | 24% | 24% | 24% | | | |
| Current Market Forecast | ..... | ..... | ..... | 23.9% +/−2.5% | 24.9% +/−4.3% | 25.5% +/−5.6% | 24.0% +/−6.6% | 23.0% +/−7.4% |
| Fannie Mae Performance: | | | | | | | | |
| Low-Income Home Purchase Mortgages. | 193,712 | 177,846 | 188,891 | 221,249 | | | | |
| Total Home Purchase Mortgages. | 814,137 | 757,870 | 802,432 | 964,847 | | | | |
| Low-Income % of Home Purchase Mortgages. | 23.8% | 23.5% | 23.5% | 22.9% | | | | |
| Freddie Mac Performance: | | | | | | | | |
| Low-Income Home Purchase Mortgages. | 93,478 | 108,948 | 129,455 | 153,435 | | | | |
| Total Home Purchase Mortgages. | 429,158 | 519,731 | 579,340 | 644,991 | | | | |
| Low-Income % of Home Purchase Mortgages. | 21.8% | 21.0% | 22.3% | 23.8% | | | | |

As shown in Table 1, performance at both Enterprises has fallen short of the market in the low-income purchase goal almost every year since 2013 (with the exception of Fannie Mae in 2014), although the Enterprises have sometimes missed the market look-back goal only by one- or two-tenths of a percentage point. Performance at both Enterprises fell short of both the benchmark and the market level in 2015. The past performance of the Enterprises indicates that it has been difficult for the Enterprises to consistently lead this market segment in making credit available.

From 2013 to 2014, the low-income home purchase market decreased from 24.0 percent to 22.8 percent. In 2015, the actual market rebounded to 23.6 percent. FHFA's current model forecasts that the market for this goal will increase slightly to 23.9 percent in 2016 and then to 24.9 percent in 2017. (Actual market levels for 2016 will not be available until HMDA data are published in September 2017.) Although the Enterprises have been challenged in meeting the percentage single-family housing goal levels in recent years, FHFA notes that each Enterprise has increased the number of single-family home purchase loans made to low-income households. Fannie Mae's eligible single-family loan purchases increased from 193,712 loans in 2013 to 221,249 in 2016. Freddie Mac's eligible single-family loan purchases increased from 93,478 in 2013 to 153,435 in 2016.

From 2018 to 2020, the proposed goals period, the current forecast peaks at 25.5 percent in 2018, before decreasing to 24.0 percent in 2019 and 23.0 percent in 2020. The average of these projections is 24.1 percent. This forecast is based on the latest data available and will be updated before the release of the final housing goals rule. The confidence intervals for the 2018–2020 goal period are wide, but they will narrow before the final rule is published.

FHFA is proposing a benchmark level for the low-income home purchase housing goal that is close to the market forecast, to encourage the Enterprises to continue to find ways to support lower income borrowers while not compromising safe and sound lending standards. FHFA notes that the proposed benchmark is close to the average of its market forecast for this goal. FHFA recognizes that there may be challenges to meeting this goal, including uneven growth in AMI and the relative affordability of private mortgage insurance, that may be beyond the control of the Enterprises and impact their ability to achieve these goals. FHFA will continue to monitor the Enterprises, both as regulator and as conservator, and if FHFA determines in later years that the benchmark level for the low-income home purchase housing

[18] Bhutta, Neil and Ringo, Daniel (2016). ''Changing FHA Mortgage Insurance Premiums and the Effects on Lending,'' FEDS Notes. Washington: Board of Governors of the Federal Reserve System, September 29, 2016, *http://dx.doi.org/10.17016/2380-7172.1843*.

goal is no longer feasible for the Enterprises to achieve in light of market conditions or for any other reason, FHFA can take appropriate steps to adjust the benchmark level.

2. Very Low-Income Home Purchase Goal

The very low-income home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for very low-income families, defined as families with incomes less than or equal to 50 percent of the area median income. The proposed rule would set the annual very low-income home purchase housing goal benchmark level for 2018 through 2020 at 6 percent, also unchanged from the current 2015 to 2017 benchmark level.

TABLE 2—VERY LOW-INCOME HOME PURCHASE GOAL

| Year | Historical performance | | | | Projected performance | | | |
|---|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| Actual Market | 6.3% | 5.7% | 5.8% | | | | | |
| Benchmark | 7% | 7% | 6% | 6% | 6% | | | |
| Current Market Forecast | | | | 5.9% +/−0.8% | 6.4% +/−1.4% | 6.7% +/−1.8% | 6.3% +/−2.1% | 6.2% +/−2.4% |
| Fannie Mae Performance: | | | | | | | | |
| Very Low-Income Home Purchase Mortgages. | 48,810 | 42,872 | 45,022 | 49,852 | | | | |
| Total Home Purchase Mortgages. | 814,137 | 757,870 | 802,432 | 964,847 | | | | |
| Very Low-Income % of Home Purchase Mortgages. | 6.0% | 5.7% | 5.6% | 5.2% | | | | |
| Freddie Mac Performance: | | | | | | | | |
| Very Low-Income Home Purchase Mortgages. | 23,705 | 25,232 | 31,146 | 36,838 | | | | |
| Total Home Purchase Mortgages. | 429,158 | 519,731 | 579,340 | 644,991 | | | | |
| Very Low-Income % of Home Purchase Mortgages. | 5.5% | 4.9% | 5.4% | 5.7% | | | | |

Since 2013, the market for very low-income home purchase loans has also been declining, as reflected in HMDA data, although there was a slight uptick in 2015. FHFA has gradually lowered the benchmark for this goal from 8 percent in 2010 to 6 percent in 2015. Despite this reduction, the performance of both Enterprises has fallen below the benchmark and the market levels in each year since 2013. In addition, both Enterprises are projected to fall below the 6 percent benchmark level in 2016.

FHFA market analysis reflects a relatively flat trend for this segment, at 5.7 percent in 2014 and 5.8 percent in 2015. FHFA's current model forecasted the market to increase slightly to 5.9 percent in 2016 and then to 6.4 percent in 2017. For the 2018–2020 goal period, FHFA's forecast indicates an increase to 6.7 percent in 2018, followed by declines to 6.3 percent and 6.2 percent in 2019 and 2020, respectively. As noted earlier, the confidence intervals widen as the forecast period lengthens, and will reduce somewhat as FHFA incorporates more information before publishing the final rule.

Similar to the low-income home purchase goal, FHFA is proposing a benchmark level that is near the market forecast to encourage the Enterprises to continue their efforts to promote safe and sustainable lending to very low-income families. As noted in the low-income purchase goal discussion, FHFA believes that there are significant challenges to housing affordability that may be beyond the control of the Enterprises that could make the proposed benchmark a challenge for the Enterprises. As each Enterprise has been struggling to meet the current benchmark and market levels, the proposed benchmark will continue to encourage the Enterprise to safely and soundly innovate in this area. FHFA, as regulator and as conservator, will continue to monitor the Enterprises' performance, and if FHFA determines in later years that the benchmark level for the very low-income areas home purchase housing goal is no longer feasible for the Enterprises to achieve in light of market conditions or for any other reason, FHFA may take appropriate steps to adjust the benchmark level.

3. Low-Income Areas Home Purchase Subgoal

*Background.* The low-income areas home purchase subgoal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are either: (1) For families in low-income areas, defined to include census tracts with median income less than or equal to 80 percent of AMI; or (2) for families with incomes less than or equal to AMI who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of AMI). Borrowers could qualify under either or both conditions. As noted in Table 3, mortgages satisfying condition (1) above (borrowers in low-income areas) are almost typically double the share of mortgages satisfying condition (2) (moderate-income borrowers in minority census tracts). For example, in 2015, 12.2 percent of mortgages met only condition (1), 7.6 percent met only condition (2), and 4.6 percent of mortgages met both conditions.

TABLE 3—COMPOSITION OF LOW-INCOME AREAS HOME PURCHASE SUBGOAL BASED ON HMDA DATA

| Year | Low-income area goal % (A) Grand Total | All low-income areas % (B) LI | Low-income census tracts that are not high minority areas % (C) LI, not HM | High minority areas that are also low-income census tracts % (D) HM and LI | High minority areas that are not low-income census tracts % (E) HM, not LI | All high minority areas % (F) HM |
|---|---|---|---|---|---|---|
| *Distribution of HMDA Borrowers By Census Tract Location* | | | | | | |
| 2004 | 16.8 | 13.3 | 8.1 | 5.3 | 3.5 | 8.7 |
| 2005 | 15.3 | 12.5 | 8.3 | 4.2 | 2.8 | 7.0 |
| 2006 | 15.8 | 13.1 | 8.9 | 4.3 | 2.7 | 6.9 |
| 2007 | 16.2 | 13.3 | 8.5 | 4.8 | 3.0 | 7.7 |
| 2008 | 14.3 | 11.6 | 7.4 | 4.2 | 2.7 | 6.9 |
| 2009 | 13.1 | 10.0 | 5.9 | 4.1 | 3.0 | 7.2 |
| 2010 | 12.1 | 9.2 | 5.6 | 3.6 | 2.9 | 6.5 |
| 2011 | 11.4 | 8.8 | 5.5 | 3.3 | 2.6 | 5.9 |
| 2012 | 13.5 | 10.3 | 6.0 | 4.3 | 3.2 | 7.5 |
| 2013 | 14.1 | 10.9 | 6.6 | 4.3 | 3.1 | 7.4 |
| 2014 | 15.0 | 12.0 | 7.5 | 4.6 | 3.0 | 7.5 |
| 2015 | 15.1 | 12.2 | 7.6 | 4.6 | 2.9 | 7.5 |
| *Enterprises' Performance:* | | | | | | |
| 2010 | 11.6 | 8.7 | 5.2 | 3.5 | 2.9 | 6.4 |
| 2011 | 10.7 | 8.1 | 5.1 | 3.1 | 2.6 | 5.7 |
| 2012 | 12.6 | 9.3 | 5.4 | 3.9 | 3.3 | 7.2 |
| 2013 | 13.4 | 10.2 | 6.2 | 4.0 | 3.2 | 7.2 |
| 2014 | 14.7 | 11.6 | 7.0 | 4.5 | 3.2 | 7.7 |
| 2015 | 15.1 | 12.1 | 7.4 | 4.6 | 3.0 | 7.7 |

Source: FHFA's tabulation of Home Mortgage Disclosure Act (HMDA) and Enterprises' data. Conventional conforming single-family owner-occupied 1st lien non-HOEPA originations.

The forecast for this subgoal is obtained by generating separate forecasts for the two sub-populations (the low-income areas component and the high-minority income component). For this proposed rulemaking, FHFA has tested alternate model specifications for this subgoal and determined that aligning the overlapping portion with the low-income area component yields forecast estimates that are more precise (in terms of a narrower confidence interval).[19]

FHFA sought to understand how the markets in low-income areas and high minority census tracts have evolved in recent years and who was being served by the Enterprises' efforts in these areas. FHFA's analysis found that the mortgage market in both low-income areas and in high-minority census tracts has been moving towards borrowers with higher incomes in recent years. As noted in Table 4, HMDA data show that both the low-income areas and the high-minority areas have increasing shares of borrowers with incomes at or above 100 percent of AMI, although loans to borrowers with incomes over 100 percent of AMI do not qualify for the minority areas component of the goal. For instance, the share of loans made to borrowers with incomes less than 50 percent of AMI and residing in low-income areas decreased from 17.8 percent in 2010 to 14.1 percent in 2015, after peaking at 19 percent in 2012. Over the same period, the share of loans made to borrowers with incomes greater than 100 percent of AMI and residing in these low-income census tracts increased from 38.8 percent in 2010 to 42.1 percent in 2015, after dipping to 36.5 percent in 2012. Thus, borrowers with higher incomes have made up an increasing share of the mortgage market in the low-income areas. A similar trend exists among borrowers residing in high minority census tracts. While borrowers with incomes greater than 100 percent of AMI represented 42.5 percent of borrowers in these census tracts in 2010, the share increased to 49.2 percent in 2015.

TABLE 4—BORROWER INCOME RELATIVE TO AMI FOR LOW-INCOME AREAS SUBGOAL

[HMDA]

| | 2010 (%) | 2011 (%) | 2012 (%) | 2013 (%) | 2014 (%) | 2015 (%) |
|---|---|---|---|---|---|---|
| *Borrowers Residing in Low-Income Census Tracts:* | | | | | | |
| Borrower Income ≤ 50% AMI | 17.8 | 17.7 | 19.0 | 15.4 | 14.1 | 14.1 |
| Borrower Income > 50% and ≤ 60% AMI | 9.6 | 9.0 | 10.5 | 9.8 | 9.3 | 9.3 |
| Borrower Income > 60% and ≤ 80% AMI | 18.4 | 17.6 | 18.8 | 18.6 | 18.6 | 18.6 |

[19] Details are available in the market model paper, ''The Size of the Affordable Mortgage Market: 2018–2020 Enterprise Single-Family Housing Goals,'' available at *http://www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/Market-Estimates_2018–2020.pdf.*

TABLE 4—BORROWER INCOME RELATIVE TO AMI FOR LOW-INCOME AREAS SUBGOAL—Continued

[HMDA]

| | 2010 (%) | 2011 (%) | 2012 (%) | 2013 (%) | 2014 (%) | 2015 (%) |
|---|---|---|---|---|---|---|
| Borrower Income > 80% and ≤ 100% AMI | 14.3 | 13.9 | 13.9 | 14.7 | 14.9 | 14.9 |
| Borrower Income > 100% and ≤ 120% AMI | 10.1 | 10.0 | 10.0 | 10.8 | 11.3 | 11.3 |
| Borrower Income > 120% AMI | 28.7 | 30.5 | 26.5 | 29.3 | 30.9 | 30.8 |
| Income Missing | 1.0 | 1.4 | 1.3 | 1.3 | 0.9 | 1.0 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| *Borrowers Residing in High-Minority Census Tracts:* | | | | | | |
| Borrower Income ≤ 50% AMI | 14.9 | 15.0 | 14.6 | 11.3 | 10.1 | 10.3 |
| Borrower Income > 50% and ≤ 60% AMI | 9.0 | 8.7 | 9.1 | 8.1 | 7.6 | 7.6 |
| Borrower Income > 60% and ≤ 80% AMI | 18.0 | 17.7 | 17.7 | 16.9 | 16.8 | 17.0 |
| Borrower Income > 80% and ≤ 100% AMI | 14.6 | 14.3 | 14.1 | 14.7 | 14.8 | 14.9 |
| Borrower Income > 100% and ≤ 120% AMI | 10.9 | 10.6 | 11.0 | 11.7 | 12.0 | 12.2 |
| Borrower Income > 120% AMI | 31.6 | 32.4 | 32.3 | 36.0 | 37.8 | 37.0 |
| Income Missing | 1.0 | 1.3 | 1.3 | 1.4 | 0.9 | 1.0 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Definitions:
Low-income census tracts = Census tracts with median income ≤ 80% Area Median Income (AMI).
High-minority census tracts = Census tracts where (i) tract median income ≤ 100% Area Median Income (AMI); and (ii) minorities comprise at least 30 percent of the tract population.
Source: FHFA's tabulation of HMDA data.

The presence of higher income borrowers in lower income and higher minority areas may be a sign of economic diversity in those areas and may be related to the possibility of improved economic indicators for the community, but there is nevertheless some concern that such a trend could displace lower income households in these areas. Change in the mix of renters to owner-occupied households often precedes and accompanies these trends. FHFA is aware that this particular subgoal may encourage the Enterprises to focus on purchasing loans for higher income households in low-income and high-minority areas, and FHFA is also aware of concerns about the impact of rising housing costs on existing households in lower-income or higher-minority areas. FHFA welcomes input on all aspects of the low-income areas goal and subgoal, and in particular how best to satisfy the policy objectives of the various components of the goal and subgoal.

Table 5 shows similar trends in Enterprise acquisitions of mortgages in low-income areas and high-minority areas. In 2015, 42.5 percent of Enterprise acquisitions were of loans made to borrowers with incomes greater than or equal to 100 percent of the AMI, up from 40.7 percent in 2010. Also in 2015, 48.3 percent of Enterprise acquisitions in high-minority census tracts were acquisitions of loans made to borrowers with incomes greater than or equal to 100 percent of AMI, up from 45.4 percent in 2010.

TABLE 5—BORROWER INCOME RELATIVE TO AMI FOR LOW-INCOME AREAS SUBGOAL

[Enterprise loans only]

| | 2010 (%) | 2011 (%) | 2012 (%) | 2013 (%) | 2014 (%) | 2015 (%) |
|---|---|---|---|---|---|---|
| *Borrowers Residing in Low-Income Census Tracts:* | | | | | | |
| Borrower Income ≤ 50% AMI | 16.7 | 16.3 | 18.2 | 14.5 | 13.4 | 13.4 |
| Borrower Income > 50% and ≤ 60% AMI | 9.2 | 8.8 | 10.0 | 9.6 | 9.4 | 9.4 |
| Borrower Income > 60% and ≤ 80% AMI | 18.4 | 17.5 | 18.6 | 18.6 | 19.0 | 19.1 |
| Borrower Income > 80% and ≤ 100% AMI | 14.8 | 14.4 | 14.6 | 15.3 | 15.5 | 15.6 |
| Borrower Income > 100% and ≤ 120% AMI | 10.8 | 10.9 | 10.8 | 11.5 | 11.7 | 11.8 |
| Borrower Income > 120% AMI | 29.9 | 32.0 | 27.7 | 30.5 | 31.0 | 30.7 |
| Income Missing | 0.2 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

TABLE 5—BORROWER INCOME RELATIVE TO AMI FOR LOW-INCOME AREAS SUBGOAL—Continued

[Enterprise loans only]

| | 2010 (%) | 2011 (%) | 2012 (%) | 2013 (%) | 2014 (%) | 2015 (%) |
|---|---|---|---|---|---|---|
| *Borrowers Residing in High-Minority Census Tracts:* | | | | | | |
| Borrower Income ≤ 50% AMI | 13.3 | 12.9 | 15.2 | 11.5 | 10.3 | 10.3 |
| Borrower Income > 50% and ≤ 60% AMI | 8.4 | 8.0 | 9.0 | 8.3 | 8.0 | 7.9 |
| Borrower Income > 60% and ≤ 80% AMI | 17.7 | 16.9 | 18.0 | 17.7 | 17.7 | 17.7 |
| Borrower Income > 80% and ≤ 100% AMI | 15.1 | 14.7 | 14.9 | 15.5 | 15.7 | 15.9 |
| Borrower Income > 100% and ≤ 120% AMI | 11.6 | 11.4 | 11.5 | 12.4 | 12.6 | 12.8 |
| Borrower Income > 120% AMI | 33.8 | 36.2 | 31.3 | 34.6 | 35.7 | 35.5 |
| Income Missing | 0.2 | 0.1 | 0.0 | 0.0 | 0.0 | 0.0 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Definitions:
Low-income census tracts = Census tracts with median income ≤ 80% Area Median Income (AMI).
High-minority census tracts = Census tracts where (i) tract median income ≤ 100% Area Median Income (AMI); and (ii) minorities comprise at least 30 percent of the tract population.
Source: FHFA's tabulation of Enterprises' data.

*Proposed rule.* The proposed rule would raise the annual low-income areas home purchase subgoal benchmark level for 2018 through 2020 to 15 percent from the 14 percent level set for the current goal period (2015–2017).

TABLE 6—LOW-INCOME AREAS HOME PURCHASE SUBGOAL

| Year | Historical performance | | | | Projected performance | | | |
|---|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| Actual Market | 14.2% | 15.2% | 15.2% | | | | | |
| Benchmark | 11% | 11% | 14% | 14% | 14% | | | |
| Current Market Forecast | ..... | ..... | ..... | 14.7% +/− 1.2% | 15.6% +/− 2.0% | 15.8% +/− 2.6% | 16.1% +/− 3.1% | 15.7% +/− 3.5% |
| Fannie Mae Performance: | | | | | | | | |
| Low-Income Area Home Purchase Mortgages. | 86,430 | 91,691 | 99,723 | n/a | | | | |
| High-Minority Area Home Purchase Mortgages. | 27,425 | 25,650 | 25,349 | n/a | | | | |
| Subgoal-Qualifying Total Home Purchase Mortgages. | 113,855 | 117,341 | 125,072 | 156,441 | | | | |
| Total Home Purchase Mortgages. | 814,137 | 757,870 | 802,432 | 964,847 | | | | |
| Low-Income Area % of Home Purchase Mortgages. | 14.0% | 15.5% | 15.6% | 16.2% | | | | |
| Freddie Mac Performance: | | | | | | | | |
| Low-Income Area Home Purchase Mortgages. | 40,444 | 55,987 | 67,172 | n/a | | | | |
| High-Minority Area Home Purchase Mortgages. | 12,177 | 14,808 | 16,601 | n/a | | | | |
| Subgoal-Qualifying Total Home Purchase Mortgages. | 52,621 | 70,795 | 83,773 | 100,608 | | | | |
| Total Home Purchase Mortgages. | 429,158 | 519,731 | 579,340 | 644,991 | | | | |
| Low-Income Area % of Home Purchase Mortgages. | 12.3% | 13.6% | 14.5% | 15.6% | | | | |

Both Enterprises have met this subgoal every year since 2013, regularly exceeding both the market and the benchmark levels. Fannie Mae's performance exceeded both the market and the benchmark in 2014 and 2015, although its performance was lower than that of the market in 2013. From 2013 through 2015, Freddie Mac's performance exceeded the benchmark but was below the market level. FHFA's forecast indicates that the market will increase slightly in the coming years, reaching a maximum level of 16.1 in 2019.

FHFA is proposing only a modest increase in the benchmark level that reflects the recent performance levels of the Enterprises while FHFA continues to evaluate whether the measure meets policy objectives. FHFA, as regulator and as conservator, will continue to monitor the Enterprises' performance,

and if FHFA determines in later years that the benchmark level for the low-income areas home purchase housing subgoal is no longer feasible for the Enterprises to achieve in light of market conditions or for other reasons, FHFA may take appropriate steps to adjust the benchmark level.

4. Low-Income Areas Home Purchase Goal

The low-income areas home purchase goal covers the same categories as the low-income areas home purchase subgoal, but it also includes moderate income families in designated disaster areas. As a result, the low-income areas home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are: (1) For families in low-income areas, defined to include census tracts with median income less than or equal to 80 percent of AMI; (2) for families with incomes less than or equal to AMI who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of AMI); or (3) for families with incomes less than or equal to 100 percent of AMI who reside in designated disaster areas.

The low-income areas goal benchmark level is established by a two-step process. The first step is setting the benchmark level for the low-income areas subgoal, as established by this proposed rule. The second step is establishing an additional increment for mortgages to families located in federally-declared disaster areas with incomes less than or equal to AMI.[20] Each year, FHFA sets the disaster area increment separately from this rule and notifies the Enterprises by letter of the benchmark level for that year. The proposed rule would set the annual low-income areas home purchase goal benchmark level for 2018 through 2020 at the subgoal benchmark level of 15 percent plus a disaster areas increment that FHFA will set separately each year.

TABLE 7—LOW-INCOME AREAS HOME PURCHASE GOAL

| Year | Historical performance | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
| Actual Market | 24.0% | 22.0% | 23.2% | 22.1% | 22.1% | 19.8% | n/a |
| Benchmark | 24% | 24% | 20% | 21% | 18% | 19% | 17% |
| Fannie Mae Performance: | | | | | | | |
| Subgoal-Qualifying Home Purchase Mortgages | 59,281 | 54,285 | 83,202 | 113,855 | 117,341 | 125,072 | 156,441 |
| Disaster Areas Home Purchase Mortgages | 56,076 | 50,209 | 58,085 | 62,314 | 54,548 | 38,885 | 38,545 |
| Goal-Qualifying Total Home Purchase Mortgages | 115,357 | 104,494 | 141,287 | 176,169 | 171,889 | 163,957 | 194,986 |
| Total Home Purchase Mortgages | 479,200 | 467,066 | 633,627 | 814,137 | 757,870 | 802,432 | 964,847 |
| Goal Performance | 24.1% | 22.4% | 22.3% | 21.6% | 22.7% | 20.4% | 20.2% |
| Freddie Mac Performance: | | | | | | | |
| Subgoal-Qualifying Home Purchase Mortgages | 32,089 | 23,902 | 32,750 | 52,621 | 70,795 | 83,773 | 100,608 |
| Disaster Areas Home Purchase Mortgages | 38,898 | 26,232 | 26,486 | 33,123 | 33,923 | 26,411 | 27,709 |
| Goal-Qualifying Total Home Purchase Mortgages | 70,987 | 50,134 | 59,236 | 85,744 | 104,718 | 110,184 | 128,317 |
| Total Home Purchase Mortgages | 307,555 | 260,796 | 288,007 | 429,158 | 519,731 | 579,340 | 644,991 |
| Goal Performance | 23.1% | 19.2% | 20.6% | 20.0% | 20.1% | 19.0% | 19.9% |

5. Low-Income Refinancing Goal

The low-income refinancing goal is based on the percentage of all single-family, owner-occupied refinance mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less than or equal to 80 percent of AMI. The proposed rule would set the annual low-income refinancing housing goal benchmark level for 2018 through 2020 at 21 percent. While this proposed benchmark level is unchanged from the current 2015 to 2017 benchmark level, FHFA believes that this level will nevertheless be challenging for the Enterprises given the current level of interest rates (which are at historic low levels) and the likelihood of interest rate hikes. Because of the significant impacts interest rate changes have on this market, Enterprise and market performance on this goal are particularly susceptible to fluctuation. Moderation in the setting of this goal is also supported by the fact that many borrowers have already refinanced during the recent extended period of historically low interest rates.

TABLE 8—LOW-INCOME REFINANCING GOAL

| Year | Historical performance | | | | Projected performance | | | |
|---|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| Actual Market | 24.3% | 25.0% | 22.5% | | | | | |

[20] Disaster declarations are listed on the Federal Emergency Management Agency (FEMA) Web site at *https://www.fema.gov/disasters.*

TABLE 8—LOW-INCOME REFINANCING GOAL—Continued

| Year | Historical performance | | | | Projected performance | | | |
|---|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| Benchmark | 20% | 20% | 21% | 21% | 21% | | | |
| Current Market Forecast | ..... | ..... | ..... | 21.1% +/− 2.9% | 23.4% +/− 4.9% | 24.3% +/− 6.2% | 25.5% +/− 7.3% | 24.8% +/− 8.3% |
| Fannie Mae Performance: | | | | | | | | |
| Low-Income Refinance Mortgages. | 519,753 | 215,826 | 227,817 | 247,663 | | | | |
| Total Refinance Mortgages. | 2,170,063 | 831,218 | 1,038,663 | 1,268,648 | | | | |
| Low-Income % of Refinance Mortgages. | 24.0% | 26.0% | 21.9% | 19.5% | | | | |
| Low-Income HAMP Modification Mortgages. | 11,858 | 6,503 | 3,563 | n/a | | | | |
| Total HAMP Modification Mortgages. | 16,478 | 9,288 | 6,595 | n/a | | | | |
| Low-Income % of HAMP Modification Mortgages. | 72.0% | 70.0% | 54.0% | n/a | | | | |
| Low-Income Refinance & HAMP Modification Mortgages. | 531,611 | 222,329 | 231,380 | n/a | | | | |
| Total Refinance & HAMP Modification Mortgages. | 2,186,541 | 840,506 | 1,045,258 | n/a | | | | |
| Low-Income % of Refinance & HAMP Modification Mortgages. | 24.3% | 26.5% | 22.1% | n/a | | | | |
| Freddie Mac Performance: | | | | | | | | |
| Low-Income Refinance Mortgages. | 306,205 | 131,921 | 179,530 | 174,664 | | | | |
| Total Refinance Mortgages. | 1,309,435 | 514,936 | 795,936 | 830,824 | | | | |
| Low-Income % of Refinance Mortgages. | 23.4% | 25.6% | 22.6% | 21.0% | | | | |
| Low-Income HAMP Modification Mortgages. | 14,757 | 6,795 | 3,064 | n/a | | | | |
| Total HAMP Modification Mortgages. | 21,599 | 10,335 | 4,433 | n/a | | | | |
| Low-Income % of HAMP Modification Mortgages. | 68.3% | 65.7% | 69.1% | n/a | | | | |
| Low-Income Refinance & HAMP Modification Mortgages. | 320,962 | 138,716 | 182,594 | n/a | | | | |
| Total Refinance & HAMP Modification Mortgages. | 1,331,034 | 525,271 | 800,369 | n/a | | | | |
| Low-Income % of Refinance & HAMP Modification Mortgages. | 24.1% | 26.4% | 22.8% | n/a | | | | |

Both Enterprises have met this goal since 2013. The performance of the Enterprises on this goal has historically been very close to actual market levels. In 2014, when the market figure was at its highest point, both Enterprises met the goal and exceeded the market. In 2015, Freddie Mac exceeded the market and the benchmark level, and Fannie Mae exceeded the benchmark level.

The low-income share of the refinance market as measured by HMDA data has changed dramatically in recent years, increasing from 20.2 percent in 2010 to a peak of 25.0 percent in 2014. FHFA's model for this goal forecasts that this market will decrease in 2016, with a sharp rise in 2017–2019, followed by slight moderation in 2020. However, the confidence intervals around the forecasts are very wide, reflecting the uncertainty about interest rates. Recent macroeconomic forecasts have predicted interest rate hikes that have not materialized.

Since 2010 the low-income refinancing housing goal has included modifications under the Home Affordable Modification Program (HAMP).[21] HAMP modifications, however, are not included in the data used to calculate the market levels. Including HAMP modifications in the Enterprise performance numbers increases the measured performance of the Enterprises on the low-income refinancing housing goal because lower income borrowers make up a greater proportion of the borrowers receiving HAMP modifications than the low-income share of the overall refinancing mortgage market. However, HAMP modifications have been declining over time, and the program stopped taking applications at the end of 2016.[22] The expiration of the HAMP program may make it slightly more difficult for the Enterprises to meet the low-income refinancing goal.

FHFA, as regulator and conservator, will continue to monitor the Enterprises and if FHFA determines in later years that the benchmark level for the low-income refinancing housing goal needs to be revised, FHFA may take appropriate steps to adjust the benchmark level.

## V. Multifamily Housing Goals

This proposed rule also sets out FHFA's views about benchmark levels for the multifamily housing goals from 2018–2020. FHFA has considered the required statutory factors described below. Despite the strength of the multifamily mortgage market, data indicates a continued supply gap of

[21] The goal has included permanent HAMP modifications to low-income borrowers in the numerator and all HAMP permanent modifications in the denominator.

[22] The HAMP program expired at the end of 2016. There will be some HAMP modifications that will count toward the Enterprise housing goals in 2017 as applications that were initiated before the end of the program are converted to permanent modifications.

units affordable to lower-income households. However, FHFA expects and encourages the Enterprises to fully support affordable multifamily housing, in part by fulfilling the multifamily housing goals in a safe and sound manner.

*A. Factors Considered in Setting the Proposed Multifamily Housing Goal Levels*

In setting the proposed benchmark levels for the multifamily housing goals, FHFA has considered the statutory factors outlined in Section 1333(a)(4) of the Safety and Soundness Act. These factors include:

1. National multifamily mortgage credit needs and the ability of the Enterprises to provide additional liquidity and stability for the multifamily mortgage market;

2. The performance and effort of the Enterprises in making mortgage credit available for multifamily housing in previous years;

3. The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

4. The ability of the Enterprises to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;

5. The availability of public subsidies; and

6. The need to maintain the sound financial condition of the Enterprises.[23]

Unlike the single-family housing goals, performance on the multifamily housing goals is measured solely against a benchmark level, without any retrospective market measure. The absence of a retrospective market measure for the multifamily housing goals results, in part, from the lack of comprehensive data about the multifamily mortgage market. Unlike the single-family market, for which HMDA provides a reasonably comprehensive dataset about single-family mortgage originations each year, the multifamily market (including the affordable multifamily market segment) has no comparable source. Consequently, it can be difficult to correlate different datasets that usually rely on different reporting formats. For example, some data are available by dollar volume while other data are available by unit production.[24]

Another difference between the single-family and multifamily goals is that there are separate single-family housing goals for home purchase and refinancing mortgages, while the multifamily goals include all Enterprise multifamily mortgage purchases, regardless of the purpose of the loan. In addition, unlike the single-family housing goals, the multifamily housing goals are measured based on the total volume of affordable multifamily mortgage purchases rather than on a percentage of multifamily mortgage purchases. The use of total volumes, which FHFA measures by the number of eligible units, rather than percentages of each Enterprises' overall multifamily purchases, requires that FHFA take into account the expected size of the overall multifamily mortgage market and the affordable share of the market, as well as the expected volume of the Enterprises' overall multifamily purchases and the affordable share of those purchases.

The lack of comprehensive data for the multifamily mortgage market is even more acute with respect to the segments of the market that are targeted to low-income families, defined as families with incomes at or below 80 percent of AMI, and very low-income families, defined as families with incomes at or below 50 percent of AMI. As required by the Safety and Soundness Act, FHFA determines affordability of multifamily units based on a unit's rent and utility expenses not exceeding 30 percent of the area median income standard for low- and very low-income families.[25] While much of the analysis that follows discusses trends in the overall multifamily mortgage market, FHFA recognizes that these general trends may not apply to the same extent to all segments of the multifamily market. Notwithstanding these challenges, FHFA has considered each of the required statutory factors (a number of which are related) as discussed below.

*Multifamily mortgage market.* FHFA's consideration of the multifamily mortgage market addresses the size of and competition within the multifamily mortgage market, as well as the subset of the multifamily market affordable to low-income and very low-income families. In 2015, the multifamily mortgage origination market experienced remarkable growth—year-over-year origination volume grew 28 percent over the prior year to nearly $250 billion, fueled largely by a recovery in multifamily construction. The overall market grew modestly in 2016. Forecasts from various industry experts indicate that overall multifamily growth in mortgage market volumes and mortgage originations are expected to increase only modestly in 2017, both for refinancing activity and for financing new multifamily units, and remain level in 2018.

According to the National Multifamily Housing Council's tabulation of American Community Survey microdata, in 2015 about 43 percent of renter households (18.7 million households) lived in multifamily properties, defined as structures with five or more rental units.[26] More generally, the population of renters continued to grow from 35 million in 2005 to 44 million in 2015, an increase of about one quarter.[27] This growth led to an increase in demand for rental units that has only partially been met by expansions in supply. Vacancy rates hit a 30-year low in 2016, and are especially low in lower-priced segments of the market, while climbing in the high-end segment of many markets.[28] As a result of these factors, rents continued to rise nationally and outpaced inflation in 2016.[29]

*Affordability in the multifamily market.* There are several factors that make it difficult to accurately forecast the affordable share of the multifamily mortgage market. First, the portion of the overall multifamily mortgage market that provides housing units affordable to low-income and very low-income families varies from year to year. Second, competition between purchasers of mortgages within the multifamily market overall may differ from the competition within the affordable multifamily market segment. Finally, the volume for the affordable multifamily market segment will depend on the availability of affordable housing subsidies.

Using the measure under which affordable rent and utilities do not exceed 30 percent of AMI, affordability for families living in rental units has decreased for many households in recent years. The Joint Center for Housing Studies (JCHS) 2016 State of the Nation's Housing Report notes some

[23] 12 U.S.C. 4563(a)(4).

[24] CFPB is planning to collect and release additional data fields (including the number of units for each multifamily loan that is reported) beginning in 2018 that likely will be useful in creating a retrospective market measure for the multifamily market.

[25] 12 U.S.C. 4563(c).

[26] Accessed on 9/22/2016 at *http://www.nmhc.org/Content.aspx?id=4708#Type_of_Structure.*

[27] ''America's Rental Housing: Expanding Options for Diverse and Growing Demand'' Joint Center on Housing Studies of Harvard University, December 2015.

[28] ''State of the Nation's Housing 2017,'' Joint Center on Housing Studies of Harvard University, June 2017.

[29] *Id.*

concerning trends in the supply of affordable multifamily units. For example, the report found that the majority of growth in the multifamily housing stock has been the result of new construction. Moreover, most of the new construction consists of apartments with fewer bedrooms and has been concentrated in urban areas with higher median rents. In the same report, JCHS also noted, ''the steep rent for new units reflect rising land and development costs, which push multifamily construction to the high end of the market.'' [30]

JCHS has also noted the significant prevalence of cost-burdened renters. In 2015, nearly half of all tenants paid more than 30 percent of household income for rental housing, especially in high-cost urban markets where most renters reside and where Fannie Mae and Freddie Mac have focused their multifamily lending. Among lower-income households, cost burdens are especially severe.[31] In addition, a recent study showed that the median incomes of renter households have experienced slight declines in some large metropolitan areas in recent years, leading to increased cost burdens for these households.[32]

One source of growth in the stock of lower-rent apartments is ''filtering,'' a process by which existing units become more affordable as they age. However, in recent years, this downward filtering of rental units has occurred at a slow pace in most markets. Coupled with the permanent loss of affordable units, as these units fall into disrepair or units are demolished to create new higher-rent or higher-valued ownership units, this trend has severely limited the supply of lower rent units. As a result, there is an acute shortfall of affordable units for extremely low-income renters (earning up to 30 percent of AMI) and very low-income renters (earning up to 50 percent of AMI). This supply gap is especially wide in certain metropolitan areas in the southern and western United States.[33]

The combination of the supply gap in affordable units which resulted in significant increases in rental rates, and the prevalence of cost-burdened renters resulting from largely flat real incomes has led to an erosion of affordability with fewer units qualifying for the housing goals.[34] This challenge of affordability is also reflected in the falling share of low-income multifamily units financed by loans purchased by the Enterprises. While 77 percent of the multifamily units financed by Fannie Mae in 2011 were low-income, that ratio dropped steadily in the intervening years to 64 percent in 2016. At Freddie Mac, the low-income share also peaked in 2011 and 2012 at 79 percent, and decreased gradually to 68 percent in 2016. For the very low-income goal, the share at Fannie Mae peaked in 2012 at 22 percent before falling to 12 percent in 2016, and at Freddie Mac the share peaked at 17 percent in 2013 before falling to 12 percent in 2016.

Small multifamily properties with 5 to 50 units are also an important source of affordable rental housing and represent approximately one-third of the affordable rental market. Because they have different operating and ownership characteristics than larger properties, small multifamily properties often have different financing needs. For example, small multifamily properties are more likely to be owned by an individual or small investor and less likely to be managed by a third party property management firm.[35] Likewise, the affordability of small multifamily units means they generate less revenue per unit than larger properties. These factors can make financing more difficult to obtain for small multifamily property owners. While the volume of Enterprise-supported loans on small multifamily properties has been inconsistent in recent years, each Enterprise continues to refine its approach to serving this market.

*Availability of public subsidies.* Multifamily housing assistance is primarily available in two forms—demand-side subsidies that either assist low-income tenants directly (*e.g.,* Section 8 vouchers) or provide project-based rental assistance (Section 8 contracts), and supply-side subsidies that support the creation and preservation of affordable housing (*e.g.,* public housing and Low-Income Housing Tax Credit (LIHTC)). The availability of public subsidies impacts the overall affordable multifamily housing market, and changes to historic programs could significantly impact the ability of the Enterprises to meet the goals.

Financing for affordable multifamily buildings—particularly those affordable to very low-income families—often uses an array of state and federal supply-side housing subsidies, such as LIHTC, tax-exempt bonds, project-based rental assistance, or soft subordinate financing.[36] In recent years, competition for affordable housing subsidy has been intense and investor interest in tax credit equity projects of all types and in all markets has been strong, especially in markets in which bank investors are seeking to meet Community Reinvestment Act (CRA) goals. By contrast, in recent months, the subsidy provided by the LIHTC program has been volatile and much more uncertain, as policymakers consider a broader range of potential tax reform legislation that could adversely impact the LIHTC program.

Subject to the continuing availability of these subsidies, there should continue to be opportunities in the multifamily market to provide permanent financing for properties with LIHTC during the 2018–2020 period. There should also be opportunities for market participants, including the Enterprises, to purchase mortgages that finance the preservation of existing affordable housing units (especially for restructurings of older properties that reach the end of their initial 15-year LIHTC compliance periods and for refinancing properties with expiring Section 8 rental assistance contracts).

In recent years, demand-side public subsidies and the availability of public housing have not kept pace with the growing number of low-income and very low-income households in need of federal housing assistance. As a result, the number of renter households with ''worst case needs'' has grown to 8.19 million, an increase of one-third since 2005.[37]

*Role of the Enterprises.* In setting the proposed multifamily housing goals, FHFA has considered the ability of the Enterprises to lead the market in making multifamily mortgage credit available.

[30] ''The State of the Nation's Housing 2016,'' Joint Center for Housing Studies of Harvard University, June 2016, available at *http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_2016_state_of_the_nations_housing_lowres.pdf.*

[31] ''State of the Nation's Housing 2017,'' Joint Center on Housing Studies of Harvard University, June 2017.

[32] ''Renting in America's Largest Metropolitan Areas,'' NYU Furman Center, March 2016.

[33] ''The Gap: The Affordable Housing Gap Analysis 2017,'' National Low Income Housing Coalition, March 2017.

[34] ''State of the Nation's Housing 2017,'' Joint Center on Housing Studies of Harvard University, June 2017.

[35] ''2012 Rental Housing Finance Survey,'' U.S. Census Bureau and U.S. Department of Housing and Urban Development, Tables 2b, 2c, 2d and 3.

[36] LIHTC is a supply-side subsidy created under the Tax Reform Act of 1986 and is the main source of new affordable housing construction in the United States today. Tax credits are used for the acquisition, rehabilitation, and/or new construction of rental housing for low-income households. LIHTC has facilitated the creation or rehabilitation of approximately 2.4 million affordable units since inception in 1986.

[37] ''Preview of 2015 Worst Case Housing Needs,'' U.S. Department of Housing and Urban Development, January 2017. Renters with worse case needs have very low incomes, lack housing assistance, and have either severe rent burdens or severely inadequate housing (or both).

The share of the overall multifamily market purchased by the Enterprises increased in the years immediately following the financial crisis but has declined more recently in response to growing private sector participation. The Enterprise share of the multifamily origination market was approximately 70 percent of the market in 2008 and 2009 compared to 38 percent in 2015.[38] The total share is expected to remain at around the 2015 level in 2016, 2017, and 2018 in light of the Scorecard cap imposed by FHFA in its role as conservator (discussed below).

Despite the Enterprises' reduced market share in the overall multifamily market, FHFA expects the Enterprises to continue to demonstrate leadership in multifamily affordable housing by providing liquidity and supporting housing for tenants at different income levels in various geographic markets and in various market segments.

*Conservatorship limits on multifamily mortgage purchases (Conservatorship Scorecard cap).* As conservator of the Enterprises, FHFA has established a yearly cap in the Conservatorship Scorecard that limits the amount of conventional (market-rate) multifamily loans that each Enterprise can purchase. The multifamily lending cap is intended to further FHFA's conservatorship goal: maintaining the presence of the Enterprises as a backstop for the multifamily finance market, while not impeding the participation of private capital. This target for the Enterprise share of the multifamily origination market reflect what is generally considered by the industry as an appropriate market share for the Enterprises during normal market conditions. The cap prevents the Enterprises from crowding out other capital sources and restrains the rapid growth of the Enterprises' multifamily businesses that started in 2011.[39]

In 2015, FHFA established a cap of $30 billion on new conventional multifamily loan purchases for each Enterprise in response to increased participation in the market from private sector capital. In 2016, the cap was initially set at $30 billion, raised in May 2016 to $35 billion, and further increased to $36.5 billion in August, in response to growth of the overall multifamily origination market throughout the year. These increases maintained the Enterprises' current market share at about 40 percent. FHFA has announced that for 2017, the cap will remain at $36.5 billion.

FHFA reviews the market size estimates quarterly, using current market data provided by Fannie Mae, Freddie Mac, the MBA, and the National Multifamily Housing Council. If FHFA determines that the actual market size is greater than was projected, the agency will consider an approximate increase to the capped (conventional market-rate) category of the Conservatorship Scorecard for each Enterprise. In light of the need for market participants to plan sales of mortgages during long origination processes, if FHFA determines that the actual market size is smaller than projected, there will be no reduction to the capped volume for the current year from the amount initially established under the Conservatorship Scorecard.

In order to encourage affordable lending activities, FHFA excludes many types of loans in underserved markets from the Conservatorship Scorecard cap on conventional loans. The Conservatorship Scorecard has no volume targets in the market segments excluded from the cap. There is significant overlap between the types of multifamily mortgages that are excluded from the Conservatorship Scorecard cap and the multifamily mortgages that contribute to the performance of the Enterprises under the affordable housing goals. The 2017 Conservatorship Scorecard excludes either the entirety of the loan amount or a *pro rata* share of the loan on the following categories: (1) Targeted affordable housing; (2) small multifamily properties; (3) blanket loans on manufactured housing communities; (4) blanket loans on senior housing and assisted living communities; (5) loans in rural areas; (6) loans to finance energy or water efficiency improvements; and (7) market rate affordable units in standard (60 percent AMI), high cost (80 percent AMI), and very high cost (100 percent AMI) markets. By excluding the underserved market categories from the cap, the Conservatorship Scorecard continues to encourage the Enterprises to support affordable housing in their purchases of multifamily mortgages.[40]

*B. Proposed Multifamily Housing Goal Benchmark Levels*

In setting the proposed multifamily housing goals, FHFA encourages the Enterprises to provide liquidity and to support various multifamily finance market segments while doing so in a safe and sound manner. The Enterprises have served as a stabilizing force in the multifamily market in the years since the financial crisis. During the conservatorship period, the Enterprise portfolios of loans on multifamily affordable housing properties have experienced low levels of delinquency and default, similar to the performance of Enterprise loans on market rate properties. In light of this performance, the Enterprises should be able to sustain or increase their volume of purchases of loans on affordable multifamily housing properties without adversely impacting the Enterprises' safety and soundness or negatively affecting the performance of their total loan portfolios.

FHFA continues to monitor the activities of the Enterprises, both in FHFA's capacity as regulator and as conservator. If necessary, FHFA will make appropriate changes in the multifamily housing goals to ensure the Enterprises' continued safety and soundness.

The proposed rule establishes benchmark levels for the multifamily housing goals for the Enterprises. Before finalizing the benchmark levels for the low-income and very low-income multifamily goals in the final rule, FHFA will review any additional data that become available about the multifamily performance of the Enterprises in 2016, updated projections of the size of the multifamily market and affordable market share, and any public comments received on the proposed multifamily housing goals.

1. Multifamily Low-Income Housing Goal

The multifamily low-income housing goal is based on the total number of rental units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI.

[38] Urban Institute, ''The GSEs' Shrinking Role in the Multifamily Market,'' April 2015.

[39] MBA, 2015 Annual Report on Multifamily Lending, October 2016.

[40] For more information on the Conservatorship Scorecard, see *https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2017-Scorecard-for-Fannie-Mae-Freddie-Mac-and-CSS.pdf.*

TABLE 9—MULTIFAMILY LOW-INCOME HOUSING GOAL

| Year | Historical performance | | | | |
|---|---|---|---|---|---|
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Fannie Mae Goal | 285,000 | 265,000 | 250,000 | 300,000 | 300,000 |
| Freddie Mac Goal | 225,000 | 215,000 | 200,000 | 300,000 | 300,000 |
| Fannie Mae Performance: | | | | | |
| Low-Income Multifamily Units | 375,924 | 326,597 | 260,124 | 307,510 | 351,235 |
| Total Multifamily Units | 501,256 | 430,751 | 372,089 | 468,798 | 551,666 |
| Low-Income % Total | 75.0% | 75.8% | 69.9% | 65.6% | 63.7% |
| Freddie Mac Performance: | | | | | |
| Low-Income Multifamily Units | 298,529 | 254,628 | 273,807 | 379,043 | 407,340 |
| Total Multifamily Units | 377,522 | 341,921 | 366,377 | 514,275 | 597,033 |
| Low-Income % of Total Units | 79.1% | 74.5% | 74.7% | 73.7% | 68.2% |

From 2012 through 2016, both Enterprises exceeded their low-income multifamily goals. Prior to 2015, Fannie Mae had higher goals than Freddie Mac. For the 2015–2017 goal period, FHFA set the same goal level for both Enterprises for the first time, reflecting parity between Freddie Mac and Fannie Mae multifamily market share in terms of unit counts.

In 2016, the goal for each Enterprise was 300,000 units. Fannie Mae purchased mortgages financing 351,235 low-income units, and Freddie Mac purchased mortgages financing 407,340 low-income units. While total volumes have increased, the share of low-income units financed at each Enterprise has been declining from peak levels in 2012.

As noted above, the forecast for the multifamily originations market increases slightly and then levels off after 2017. The Conservatorship Scorecard cap for each Enterprise was raised from an initial $30 billion cap to $36.5 billion in August 2016 in response to growth of the multifamily origination market throughout the year. This change allowed the Enterprises to pursue purchases of a greater volume of multifamily originations and support the overall market and may seem to support an increase in the proposed goal levels for both Enterprises. However, the gap between the supply of low-income and very low-income units and the needs of low-income households, as described in the affordability discussion above, is expected to continue in the next goal period. Moreover, the forecast for the multifamily originations market for 2017 and 2018 is relatively flat, and securing housing subsidies will likely continue to be challenging. These trends suggest moderation in any increase in the proposed goal levels. Therefore, balancing these considerations, the proposed rule sets the annual low-income multifamily housing goal for each Enterprise at 315,000 units in each year from 2018 through 2020, a modest increase from the 300,000 unit goal for each Enterprise in 2015–2017.

2. Multifamily Very Low-Income Housing Subgoal

The multifamily very low-income housing subgoal includes units affordable to very low-income families, defined as families with incomes no greater than 50 percent of AMI.

TABLE 10—MULTIFAMILY VERY LOW-INCOME SUBGOAL

| Year | Historical performance | | | | |
|---|---|---|---|---|---|
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Fannie Mae Goal | 80,000 | 70,000 | 60,000 | 60,000 | 60,000 |
| Freddie Mac Goal | 59,000 | 50,000 | 40,000 | 60,000 | 60,000 |
| Fannie Mae Performance: | | | | | |
| Very Low-Income Multifamily Units | 108,878 | 78,071 | 60,542 | 69,078 | 65,445 |
| Total Multifamily Units | 501,256 | 430,751 | 372,089 | 468,798 | 551,666 |
| Very Low-Income % of Total Units | 21.7% | 18.1% | 16.3% | 14.7% | 11.9% |
| Freddie Mac Performance: | | | | | |
| Very Low-Income Multifamily Units | 60,084 | 56,752 | 48,689 | 76,935 | 73,032 |
| Total Home Purchase Mortgages | 377,522 | 341,921 | 366,377 | 514,275 | 597,033 |
| Very Low-Income % of Total Units | 15.9% | 16.6% | 13.3% | 15.0% | 12.2% |

From 2012 through 2016, both Enterprises met and exceeded their very low-income multifamily goals. In 2016, the goal for each Enterprise was 60,000 units. Fannie Mae purchased mortgages financing 65,445 very low-income units, while Freddie Mac purchased mortgages financing 73,032 very low-income units. Similar to the low-income multifamily goal, the share of very low-income units financed at each Enterprise has been declining in recent years.

The market for very low-income multifamily housing faces even larger challenges than the market for low-income multifamily housing, given the need for lower rents—often requiring deeper subsidies—to make units affordable to these households. These factors suggest moderation in the setting of the very low-income multifamily subgoal for the Enterprises. Therefore, the proposed rule maintains the annual very low-income multifamily subgoal for each Enterprise at 60,000 units each year from 2018 through 2020.

3. Small Multifamily Low-Income Housing Subgoal

A small multifamily property is defined as a property with 5 to 50 units. The small multifamily low-income housing subgoal is based on the total number of units in small multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families,

defined as families with incomes less than or equal to 80 percent of AMI.

TABLE 11—SMALL MULTIFAMILY LOW-INCOME SUBGOAL

| Year | Historical performance | | | | |
|---|---|---|---|---|---|
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Small Low-Income Multifamily Goal | ..... | ..... | ..... | 6,000 | 8,000 |
| Fannie Mae Performance: | | | | | |
| Small Low-Income Multifamily Units | 16,801 | 13,827 | 6,732 | 6,731 | 9,310 |
| Total Small Multifamily Units | 26,479 | 21,764 | 11,880 | 11,198 | 15,230 |
| Low-Income % of Total Small Multifamily Units | 63.5% | 63.5% | 56.7% | 60.1% | 61.1% |
| Freddie Mac Performance: | | | | | |
| Small Low-Income Multifamily Units | 829 | 1,128 | 2,076 | 12,802 | 22,101 |
| Total Small Multifamily Units | 2,194 | 2,375 | 4,659 | 21,246 | 33,984 |
| Low-Income % of Total Small Multifamily Units | 37.8% | 47.5% | 44.6% | 60.3% | 65.0% |

This was a new subgoal created in the 2015–2017 goal period. The goal was set at 6,000 units in 2015, 8,000 units in 2016, and 10,000 units in 2017. In 2016, both Enterprises exceeded the goal of 8,000 units. Fannie Mae purchased mortgages financing 9,310 units, and Freddie Mac purchased mortgages financing 22,101 units.

The proposed rule would set the annual small multifamily subgoal for each Enterprise at 10,000 units for each year from 2018 through 2020, the same as the 2017 goal. The Enterprises continue to innovate in their approaches to serving this market. FHFA is still monitoring the trends in this market segment as well as Enterprise performance for this new subgoal, and will consider all input in preparation of the final rule. However, FHFA is proposing to maintain the same benchmark level for 2018 through 2020 as the 2017 benchmark level for both Enterprises. Maintaining the current goal should continue to encourage the Enterprises' participation in this market and ensure the Enterprises have the expertise necessary to serve this market should private sources of financing become unable or unwilling to lend on small multifamily properties.

## VI. Section-by-Section Analysis of Other Proposed Changes

The proposed rule would also revise other provisions of the housing goals regulation, as discussed below.

### *A. Changes to Definitions—Proposed § 1282.1*

The proposed rule includes changes to definitions used in the current housing goals regulation. The proposed rule would revise the definitions of ''median income,'' ''metropolitan area,'' and ''non-metropolitan area'' and would remove the definition of ''AHS.''

1. Definition of ''Median Income''

The current regulation defines ''median income'' as the unadjusted median family income for an area as most recently determined by HUD. While this definition accurately identifies the source that FHFA uses to determine median incomes each year, the definition does not reflect the longstanding practice FHFA has followed in providing the Enterprises with the median incomes that the Enterprises must use each year. The proposed rule would revise the definition to be clear that the Enterprises are required to use the median incomes provided by FHFA each year in determining affordability for purposes of the housing goals.

The proposed rule would also make two additional technical changes to the definition of ''median income.'' First, the proposed rule would add a reference to ''non-metropolitan areas'' in the definition because FHFA determines median incomes for both metropolitan areas and non-metropolitan areas each year. Second, the proposed rule would remove the word ''family'' in one place so that the term ''median income'' is used consistently throughout the regulation.

The revised definition would read: ''Median income means, with respect to an area, the unadjusted median family income for the area as determined by FHFA. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan and non-metropolitan areas are to be applied for purposes of determining median income.''

2. Definitions of ''Metropolitan Area'' and ''Non-Metropolitan Area''

The proposed rule would revise the definitions of ''metropolitan area'' and ''non-metropolitan area'' to be consistent with each other and to reflect the proposed changes to the definition of ''median income'' discussed above.

The current regulation defines both ''metropolitan area'' and ''non-metropolitan area'' based on the areas for which HUD defines median family incomes. The definition of ''metropolitan area'' refers to median family incomes ''determined by HUD,'' while the definition of ''non-metropolitan area'' refers to median family incomes ''published annually by HUD.''

To be consistent with the proposed changes to the definition of ''median income,'' the proposed rule would revise the definition of ''metropolitan area'' by replacing the phrase ''for which median family income estimates are determined by HUD'' with the phrase ''for which median incomes are determined by FHFA.'' For the same reason, the proposed rule would revise the definition of ''non-metropolitan area'' by replacing the phrase ''for which median family income estimates are published annually by HUD'' with the phrase ''for which median incomes are determined by FHFA.''

3. Definition of ''AHS'' (American Housing Survey)

The proposed rule would remove the definition of ''AHS'' from § 1282.1 because the term is no longer used in the Enterprise housing goals regulation.

Prior to the 2015 amendments to the Enterprise housing goals regulation, the term ''AHS'' was used to specify the data source from which FHFA derives the utility allowances used to determine the total rent for a rental unit which, in turn, is used to determine the affordability of the unit when actual utility costs are not available. The 2015 amendments consolidated and simplified the definitions applicable to determining the total rent and eliminated the reference to AHS in the part of the definition related to utility

allowances, providing FHFA with flexibility in how it determines the nationwide utility allowances. The current nationwide average utility allowances are still fixed numbers based on AHS data, but the regulation does not require FHFA to rely solely on AHS data to determine those utility allowances. The term ''AHS'' is not used anywhere else in the regulation, so the proposed rule would remove the definition from § 1282.1.

*B. Data Source for Estimating Affordability of Multifamily Rental Units—Proposed § 1282.15(e)(2)*

The proposed rule would revise § 1282.15(e)(2) to update the data source used by FHFA to estimate affordability where actual information about rental units in a multifamily property is not available.

Section 1282.15(e) permits the Enterprises to use estimated affordability information to determine the affordability of multifamily rental units for up to 5 percent of the total multifamily rental units in properties securing mortgages purchased by the Enterprise each year when actual information about the units is not available. The estimations are based on the affordable percentage of all rental units in the census tract in which the property for which the Enterprise is estimating affordability is located.

The current regulation provides that the affordable percentage of all rental units in the census tract will be determined by FHFA based on the most recent decennial census. However, the 2000 decennial census was the last decennial census that collected this information. The U.S. Census Bureau now collects this information through the ACS. Since 2011, FHFA has used the most recent data available from the ACS to determine the affordable percentage of rental units in a census tract for purposes of estimating affordability. The proposed rule would revise § 1282.15(e)(2) to reflect this change. To take into account possible future changes in how rental affordability data is collected, the revised sentence would not refer specifically to data derived from the ACS. Section 1282.15(e)(2) would be revised to replace the phrase ''as determined by FHFA based on the most recent decennial census'' with the phrase ''as determined by FHFA.''

*C. Determination of Median Income for Certain Census Tracts—Proposed § 1282.15(g)(2)*

The proposed rule would revise § 1282.15(g) to remove paragraph (g)(2), an obsolete provision describing the method that the Enterprises were required to use to determine the median income for a census tract where the census tract was split between two areas with different median incomes.

Current § 1282.15(g)(2) requires the Enterprises to use the method prescribed by the Federal Financial Institutions Examination Council to determine the median income for certain census tracts that were split between two areas with different median incomes. This provision was put in place by the 1995 final rule published by HUD to establish the Enterprise housing goals under the Safety and Soundness Act.[41]

As discussed above regarding the definition of ''median income,'' the process of determining median incomes has changed over the years, so that the Enterprises are now required to use median incomes provided by FHFA each year when determining affordability for purposes of the housing goals. Because FHFA provides median incomes for every location in the United States, it is no longer necessary for the regulation to set forth a process for the Enterprises to use when it is not certain what the applicable median income would be for a particular location. Consequently, the proposed rule would remove § 1282.15(g)(2) from the regulation.

*D. Housing Plan Timing—Proposed § 1282.21(b)(3)*

The proposed rule would revise § 1282.21(b)(3) to provide the Director with discretion to determine the appropriate period of time that an Enterprise may be subject to a housing plan to address a failure to meet a housing goal.

Section 1336 of the Safety and Soundness Act provides for the enforcement of the Enterprise housing goals. If FHFA determines that an Enterprise has failed to meet a housing goal and that achievement of the goal was feasible, FHFA may require the Enterprise to submit a housing plan describing the actions it will take ''to achieve the goal for the next calendar year.''[42] The Safety and Soundness Act has similar provisions for requiring a housing plan if FHFA determines, during the year in question, that there is a substantial probability that an Enterprise will fail to meet a housing goal and that achievement of the goal is feasible. In such cases, the housing plan would describe the actions the Enterprise will take ''to make such improvements and changes in its operations as are reasonable in the remainder of such year.'' The current regulation generally mirrors the statutory language on the requirements for a housing plan, except that the regulation makes clear that the housing plan must also ''[a]ddress any additional matters relevant to the plan as required, in writing, by the Director.''[43]

FHFA required an Enterprise to submit a housing plan for the first time in late 2015 in response to Freddie Mac's failure to achieve the single-family low-income and very low-income home purchase goals in 2014. FHFA required Freddie Mac to submit a housing plan setting out the steps Freddie Mac would take in 2016 and 2017 to achieve the two goals that it failed to achieve in 2013 and 2014. The requirement for the plan to address actions taken in both 2016 and 2017 was based on FHFA's authority under § 1282.21(b) to require a housing plan to address any additional matters required by the Director and was intended to address an issue of timing.

FHFA's final determination on Freddie Mac's performance on the housing goals for 2014 was issued on December 17, 2015. As described in more detail below, that timing was driven by procedural steps required by the Safety and Soundness Act and FHFA's own regulation. If FHFA interpreted narrowly the statutory and regulatory provisions stating that the housing plan should address the steps the Enterprise would take in the following year, the housing plan itself would become irrelevant because the year it would cover would have ended before the housing plan was even submitted to FHFA.

The extended time required to reach a final determination housing goals performance will occur every year as a result of the procedural steps required by the Safety and Soundness Act. Under those procedures, if FHFA determines that an Enterprise has failed to achieve a housing goal in a particular year, FHFA is first required to issue a preliminary determination that generally provides at least 30 days for the Enterprise to respond. FHFA must then consider any information submitted by the Enterprise before making a final determination on whether the Enterprise failed to meet the goal and whether achievement of the goal was feasible. If FHFA determines that the Enterprise should be required to submit a housing plan, the statute provides for up to 45 days for the

[41] *See* 60 FR 61846 (Dec. 1, 1995).

[42] *See* 12 U.S.C. 4566(c)(2).

[43] *See* 12 CFR 1282.21(b).

Enterprise to submit its housing plan.[44] FHFA must then evaluate the housing plan, generally within 30 days. The time necessary for FHFA's review and determination at each step of this procedural process is generally four to six months.

These procedural steps cannot begin until FHFA has the information necessary to make a determination on whether the Enterprise has met the housing goals. The Enterprises are required to submit their official performance numbers to FHFA within 75 days after the end of the year, usually March 15 of the following year. Therefore, the earliest that FHFA would be able to approve a housing plan from an Enterprise would be mid-July of the year following the performance year. For the single-family housing goals, this time period is extended even further because the HMDA data necessary to determine if an Enterprise met the retrospective market measurement portion of the single-family housing goals are not available until September of the year following the performance year.

Based on (1) FHFA's experience in overseeing the housing goals, in particular the experience in requiring Freddie Mac to submit a housing plan based on its failure to achieve certain housing goals in 2014, (2) the inherent conflict in the timeframes set out in the Safety and Soundness Act, and (3) the importance of ensuring that any housing plans are focused on sustainable improvements in Enterprise goals performance, FHFA is proposing to amend § 1282.21(b)(3) to state explicitly that a housing plan that is required based on an Enterprise's failure to achieve a housing goal will be required to address a time period determined by the Director. If FHFA requires an Enterprise to submit a housing plan, FHFA will notify the Enterprise of the applicable time period in FHFA's final determination on the performance of the Enterprise for a particular year.

## VII. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

## VIII. Regulatory Flexibility Act

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

### List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

### Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513 and 4526, FHFA proposes to amend part 1282 of Title 12 of the Code of Federal Regulations as follows:

**CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

**SUBCHAPTER E—HOUSING GOALS AND MISSION**

## PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

**Authority:** 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

### § 1282.1 [Amended]

■ 2. Amend § 1282.1 by revising the definitions of ''AHS'', ''Median income,'' ''Metropolitan area,'' and ''Non-metropolitan area'' to read as follows:

### § 1282.1 Definitions.

* * * * *

*Median income* means, with respect to an area, the unadjusted median family income for the area as determined by FHFA. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan and non-metropolitan areas are to be applied for purposes of determining median income.

*Metropolitan area* means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median incomes are determined by FHFA.

* * * * *

*Non-metropolitan area* means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area, for which median incomes are determined by FHFA.

* * * * *

■ 3. Revise § 1282.12 to read as follows:

### § 1282.12 Single-family housing goals.

(a) *Single-family housing goals.* An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds either:

(1) The share of the market that qualifies for the goal; or

(2) The benchmark level for the goal.

(b) *Size of market.* The size of the market for each goal shall be established annually by FHFA based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 150 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income families housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2018, 2019 and 2020 shall be 24 percent of the total number of purchase money mortgages purchased by that Enterprise

[44] *See* 12 U.S.C. 4566(c)(3).

in each year that finance owner-occupied single-family properties.

(d) *Very low-income families housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2018, 2019 and 2020 shall be 6 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(e) *Low-income areas housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) A benchmark level which shall be set annually by FHFA notice based on the benchmark level for the low-income areas housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for moderate-income families in designated disaster areas in the most recent year for which such data is available.

(f) *Low-income areas housing subgoal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income census tracts or for moderate-income families in minority census tracts shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2018, 2019 and 2020 shall be 15 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) *Refinancing housing goal.* The percentage share of each Enterprise's total purchases of refinancing mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2018, 2019 and 2020 shall be 21 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

■ 4. Revise § 1282.13 to read as follows:

**§ 1282.13 Multifamily special affordable housing goal and subgoals.**

(a) *Multifamily housing goal and subgoals.* An Enterprise shall be in compliance with a multifamily housing goal or subgoal if its performance under the housing goal or subgoal meets or exceeds the benchmark level for the goal or subgoal, respectively.

(b) *Multifamily low-income housing goal.* The benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be at least 315,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2018, 2019, and 2020.

(c) *Multifamily very low-income housing subgoal.* The benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be at least 60,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2018, 2019, and 2020.

(d) *Small multifamily low-income housing subgoal.* The benchmark level for each Enterprise's purchases of mortgages on small multifamily properties affordable to low-income families shall be at least 10,000 dwelling units affordable to low-income families in small multifamily properties financed by mortgages purchased by the Enterprise in each year for 2018, 2019, and 2020.

**§ 1282.15 [Amended]**

■ 5. Amend § 1282.15 as follows:

■ a. In paragraph (e)(2) remove the phrase ''based on the most recent decennial census''; and

■ b. Revise paragraph (g).

The revision reads as follows:

**§ 1282.15 General counting requirements.**

* * * * *

(g) *Application of median income.* For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and the definitions in § 1282.1, the area is:

(1) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(2) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

* * * * *

■ 6. Amend § 1282.21 by revising paragraph (b)(3), to read as follows:

**§ 1282.21 Housing plans.**

* * * * *

(b) * * *

(3) Describe the specific actions that the Enterprise will take in a time period determined by the Director to improve the Enterprise's performance under the housing goal; and

* * * * *

Dated: June 28, 2017.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2017–14286 Filed 7–6–17; 8:45 am]

**BILLING CODE 8070–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0667; Directorate Identifier 2016–SW–053–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Limited (Bell) Helicopters

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Bell Model 407 helicopters. This proposed AD would require repetitive inspections of the tail rotor (TR) driveshaft segment assemblies and a torque check of the TR adapter retention nuts. This proposed AD is prompted by a report of an in-flight failure of the TR drive system. The proposed actions are intended to detect and correct an unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 5, 2017.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

• *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0667; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the Transport Canada AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

**Discussion**

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD No. CF–2016–21, dated July 7, 2016 (AD CF–2016–21), to correct an unsafe condition for Bell Model 407 helicopters. Transport Canada advises that a Model 407 helicopter experienced in-flight failure of the TR drive system, which resulted in loss of directional control. The helicopter landed safely with substantial damage to the TR segmented shaft and adapter splines, coupling, and hanger bearings. According to Transport Canada, the splines connecting the adapter part number (P/N) 406–040–328–105 to the shaft assembly P/N 407–040–330–107 were ''severely worn and no longer capable of performing their function.'' The investigation further revealed other Model 407 helicopters with the same axial and radial play or looseness of some splined connections. AD CF–2016–21 states that these parts should be clamped together with threaded fasteners with no detectable looseness. Transport Canada advises that undetected looseness at the splined connection could result in wear of the parts and eventual loss of directional control of the helicopter.

For these reasons, AD CF–2016–21 requires a repetitive inspection of the TR driveshaft assemblies for play and a one-time torque verification of the TR adapter retention nuts.

**FAA's Determination**

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, Transport Canada, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

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

We reviewed Bell Alert Service Bulletin (ASB) 407–16–113, dated February 12, 2016 (ASB 407–16–113), which specifies procedures for inspecting the TR driveshaft assemblies for noticeable rotational or axial play between each adapter and TR driveshaft. ASB 407–16–113 also specifies procedures for performing a torque check of each TR adapter retention nut on the four TR driveshaft segments.

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

**Proposed AD Requirements**

This proposed AD would require inspecting each TR driveshaft segment assembly for rotational and axial play between the adapter and the TR driveshaft and determining the installation torque of each adapter retention nut. For helicopters with 4,000 or more hours time-in-service (TIS), the driveshaft assembly inspection would be required within 50 hours TIS. For helicopters with less than 4,000 hours TIS, the driveshaft assembly inspection would be required within 100 hours TIS. Thereafter, these inspections would be required at intervals not to exceed 330 hours TIS. The torque verification of the adapter retention nuts would be a one-time inspection.

• If there is play or looseness in the TR driveshaft, the proposed AD would require correcting the discrepant splined fitting before further flight.

• The proposed AD would also require replacing the adapter retention nut anytime the adapter is re-assembled.

**Costs of Compliance**

We estimate that this proposed AD would affect 667 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this proposed AD. At an average labor rate of $85 per hour, inspecting the TR driveshaft segments and adapters for play would require about 1 work-hour, for a cost per helicopter of $85, and a total cost of $56,695 to the U.S. fleet per inspection cycle. Determining the torque of the four adapter retention nuts would require about 3 work-hours for a cost per helicopter of $255 and a total cost of $170,085 to the U.S. fleet.

If required, repairing a worn driveshaft adapter would require about 3 work-hours, and required parts would cost about $1,259, for a cost per helicopter of $1,514.

Replacing an adapter retention nut would require about 1 work-hour, and required parts cost are negligible, for a cost of $85 per helicopter and $56,695 for the U.S. fleet per inspection cycle.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Bell Helicopter Textron Canada Limited (Bell):** Docket No. FAA–2017–0667; Directorate Identifier 2016–SW–053–AD.

**(a) Applicability**

This AD applies to Bell Model 407 helicopters, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a loose tail rotor (TR) driveshaft splined connection, which if not corrected could result in wear in the splines, failure of the TR drive system, and subsequent loss of directional control of the helicopter.

**(c) Comments Due Date**

We must receive comments by September 5, 2017.

**(d) Compliance**

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

**(e) Required Actions**

For helicopters with less than 4,000 hours time-in-service (TIS), within 100 hours TIS, and for helicopters with 4,000 or more hours TIS, within 50 hours TIS:

(1) Inspect each TR driveshaft segment assembly for rotational and axial play between the adapter and the TR driveshaft at the four positions depicted in Figure 1 of Bell Alert Service Bulletin (ASB) 407–16–113, dated February 12, 2016 (ASB 407–16–113). If there is any axial or rotational play, remove the adapter from the TR driveshaft segment assembly and inspect the adapter, washers, and TR driveshaft for damage. Replace the adapter retention nut and apply a torque of 30 to 50 inch-pounds (5.7 to 7.9 Nm). Replace any part with damage or repair the part if the damage is within the maximum repair damage limitations.

(2) Determine the torque of each TR adapter retention nut at each of the four segment assembly positions depicted in Figure 1 of Bell ASB 407–16–113. If the torque is less than 30 inch-pounds (5.7 Nm), remove the adapter from the TR driveshaft segment assembly and inspect the adapter, washers, and TR driveshaft for damage. Replace the adapter retention nut and apply a torque of 30 to 50 inch-pounds (5.7 to 7.9 Nm). Replace any part with damage or repair the part if the damage is within the maximum repair damage limitations.

(3) Repeat the actions specified in paragraph (e)(1) of this AD at intervals not to exceed 330 hours TIS.

**(f) Special Flight Permits**

Special flight permits are prohibited.

**(g) Alternative Methods of Compliance (AMOCs)**

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

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

**(h) Additional Information**

The subject of this AD is addressed in Transport Canada AD No. CF–2016–21, dated July 7, 2016. You may view the Transport Canada AD on the Internet at *http://www.regulations.gov* in the AD Docket.

**(i) Subject**

Joint Aircraft Service Component (JASC) Code: 6510 Tail Rotor Drive Shaft.

Issued in Fort Worth, Texas, on June 27, 2017.

**Scott A. Horn,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2017–14231 Filed 7–6–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### 31 CFR Part 1010

**RIN 1506–AB38**

## Proposal of Special Measure Against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN is issuing a notice of proposed rulemaking (NPRM), pursuant to section 311 of the USA PATRIOT Act, to prohibit the opening or maintaining of a correspondent account in the United States for, or on behalf of, Bank of Dandong.

**DATES:** Written comments on the notice of proposed rulemaking must be submitted on or before September 5, 2017.

**ADDRESSES:** You may submit comments, identified by 1506–AB38, by any of the following methods:

• *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the

instructions for submitting comments. Include Docket Number FinCEN–2017–0010 and RIN 1506–AB38 in the submission.

- *Mail:* The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB38 in the body of the text. Please submit comments by one method only.
- Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.
- *Inspection of comments:* FinCEN uses the electronic, Internet-accessible dockets at *Regulations.gov* as its complete docket; all hard copies of materials that should be in the docket, including public comments, are electronically scanned and placed there. **Federal Register** notices published by FinCEN are searchable by docket number, RIN, or document title, among other things, and the docket number, RIN, and title may be found at the beginning of such notices. In general, FinCEN will make all comments publicly available by posting them on *http://www.regulations.gov.*

**FOR FUTHER INFORMATION CONTACT:** The FinCEN Resource Center at (800) 949–2732.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (the USA PATRIOT Act). Title III of the USA PATRIOT Act amends the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to FinCEN.

Section 311 of the USA PATRIOT Act (section 311), codified at 31 U.S.C. 5318A, grants FinCEN the authority, upon finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, one or more financial institutions operating outside of the United States, one or more classes of transactions within or involving a jurisdiction outside of the United States, or one or more types of accounts is of primary money laundering concern, to require domestic financial institutions and domestic financial agencies to take certain ''special measures.'' The five special measures enumerated in section 311 are prophylactic safeguards that defend the U.S. financial system from money laundering and terrorist financing. FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. Special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to prohibit, or impose conditions on, the opening or maintaining in the United States of correspondent or payable-through accounts for, or on behalf of, a foreign banking institution, if such correspondent account or payable-through account involves the foreign financial institution found to be of primary money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a financial institution is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.[1] The Secretary shall also consider such information as the Secretary determines to be relevant, including the following potentially relevant factors:

- The extent to which such a financial institution is used to facilitate or promote money laundering in or through the jurisdiction, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction (WMD) or missiles;
- the extent to which such a financial institution is used for legitimate business purposes in the jurisdiction; and
- the extent to which such action is sufficient to ensure that the purposes of section 311 are fulfilled, and to guard against international money laundering and other financial crimes.[2]

Upon finding that a financial institution is of primary money laundering concern, the Secretary may require covered financial institutions to take one or more special measures. In selecting which special measure(s) to take, the Secretary ''shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in Section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary [of the Treasury] may find appropriate.'' [3] In imposing the fifth special measure, the Secretary must do so ''in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System.'' [4]

In addition, in selecting which special measure(s) to take, the Secretary shall consider the following factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, class of transactions, or type of account; and
- the effect of the action on United States national security and foreign policy.[5]

## II. Summary of Notice of Proposed Rulemaking

This NPRM sets forth 1. FinCEN's finding that Bank of Dandong, a commercial bank located in Dandong, China, is a financial institution of primary money laundering concern pursuant to Section 311, and 2. FinCEN's proposal of a prohibition under the fifth special measure on the opening or maintaining in the United States of a correspondent account for, or on behalf of, Bank of Dandong. As described more fully below, FinCEN finds that Bank of Dandong is a financial institution of primary money laundering concern because it serves as a conduit for North Korea to access the U.S. and international financial systems, including by facilitating millions of dollars of transactions for companies involved in North Korea's WMD and

[1] 31 U.S.C. 5318A(c)(1).

[2] 31 U.S.C. 5318A(c)(2)(B).

[3] 31 U.S.C. 5318A(a)(4)(A).

[4] 31 U.S.C. 5318A(b)(5).

[5] 31 U.S.C. 5318A(a)(4)(B).

ballistic missile programs. Having made such a finding and having performed the requisite consultations set forth in the statute, FinCEN proposes a prohibition on covered U.S. financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, Bank of Dandong.

## III. Background on North Korea Sanctions Evasion and Bank of Dandong

### *1. North Korea's Evasion of Sanctions*

North Korea continues to advance its nuclear and ballistic missile programs despite international censure and U.S. and international sanctions. In response to North Korea's continued actions to proliferate WMDs, the United Nations Security Council (UNSC) has issued a number of United Nations Security Council resolutions (UNSCRs), including 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), and 2321 (2016), that restrict North Korea's financial and operational activities related to its nuclear and ballistic missile programs. Additionally, the President of the United States has issued Executive Orders 13466, 13551, 13570, 13687, and 13722 to impose economic sanctions on North Korea pursuant to the International Emergency Economic Powers Act,[6] and the U.S. Department of the Treasury has designated North Korean persons for asset freezes pursuant to other Executive Orders, such as Executive Order 13382, which targets WMD proliferators worldwide.

According to the February 2016 annual report by the UN Panel of Experts, established pursuant to UNSCR 1874, although international sanctions have served to significantly isolate North Korean banks from the international financial system, the North Korean government continues to access the international financial system to support its WMD and conventional weapons programs through its use of aliases, agents, foreign individuals in multiple jurisdictions, and a long-standing network of front companies and embassy personnel that support illicit activities through banking, bulk cash, and trade.[7]

According to that report, transactions for front companies for North Korea have been processed through correspondent bank accounts in the United States and Europe. Further, the enhanced vigilance required under the relevant UNSCRs is frustrated by the fact that North Korea-linked companies are often registered by third-country nationals who also use indirect payment methods and circuitous transactions disassociated from the movement of goods or services to conceal their activity.

Additionally, according to the February 2017 annual report produced by the same body, despite expanded financial sanctions adopted by the Security Council in UNSCRs 2270 and 2321, North Korea has continued to access the international financial system to support its activities.[8] Financial networks of North Korea have adapted to these sanctions, using evasive methods to maintain access to formal banking channels and bulk cash transfers to facilitate prohibited activities. According to the report, one way that North Korean financial institutions and networks access the international banking system is through trading companies, including designated entities, that are linked to North Korea. These trading companies open bank accounts that perform the same financial services as banks, such as maintaining funds on deposit and providing indirect correspondent bank account services.

To further protect the United States from North Korea's illicit financial activity, FinCEN has issued three advisories since 2005 detailing its concerns surrounding the deceptive financial practices used by North Korea and North Korean entities and calling on U.S. financial institutions to take appropriate risk mitigation measures. Moreover, on November 9, 2016, FinCEN finalized a rule under section 311 prohibiting the opening or maintaining of correspondent accounts in the United States by covered financial institutions for, or on behalf of, North Korean banks.[9] The final rule also requires U.S. financial institutions to apply additional due diligence measures in order to prevent North Korean financial institutions from gaining improper indirect access to U.S. correspondent accounts. The notice of finding associated with the final rule highlighted North Korea's use of state-controlled financial institutions and front companies to conduct international financial transactions that, among other things, support the proliferation of its WMD and conventional weapons programs.[10] As explained below, Bank of Dandong facilitates such activity through the U.S. financial system.

### *2. Bank of Dandong*

Established in 1997, Bank of Dandong is a small commercial bank located in Dandong, China that offers domestic and international financial services to both individuals and businesses. According to commercial database research, Bank of Dandong is ranked as the 148th-largest financial institution out of a total of 196 financial institutions in China's banking sector. As discussed further below, FinCEN is concerned that Bank of Dandong serves as a financial conduit between North Korea and the U.S. and international financial systems in violation of U.S. and UN sanctions.

## IV. Finding Bank of Dandong To Be a Financial Institution of Primary Money Laundering Concern

Based on information available to the agency, including both public and non-public reporting, and after performing the requisite interagency consultations and considering each of the factors discussed below, FinCEN finds that reasonable grounds exist for concluding that Bank of Dandong is a financial institution of primary money laundering concern.

### *1. The Extent to Which Bank of Dandong Has Been Used To Facilitate or Promote Money Laundering, Including by Entities Involved in the Proliferation of Weapons of Mass Destruction or Missiles*

Bank of Dandong serves as a gateway for North Korea to access the U.S. and international financial systems despite U.S. and UN sanctions. Increasing U.S. and international sanctions on North Korea have caused most banks worldwide to sever their ties with North Korean banks, impeding North Korea's ability to gain direct access to the global financial system. As a result, North Korea uses front companies and banks outside North Korea to conduct financial transactions, including transactions in support of its WMD and conventional weapons programs. For example, as of mid-February 2016, North Korea was using bank accounts under false names and conducting financial transactions through banks located in China, Hong Kong, and various southeast Asian countries. The

[6] Title II of Public Law 95–223, 91 Stat. 1626 (October 28, 1977).

[7] United Nations Security Council, *Report of the Panel of Experts established pursuant to resolution 1874 (2009).* February 24, 2016. S/2016/157, *available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/157.*

[8] United Nations Security Council, *Report of the Panel of Experts established pursuant to resolution 1874 (2009).* February 27, 2017. S/2017/150, *available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/150.*

[9] 81 FR 78715 (November 9, 2016).

[10] 81 FR 35441 (June 2, 2016).

primary bank in China was Bank of Dandong.

In early 2016, accounts at Bank of Dandong were used to facilitate millions of dollars of transactions on behalf of companies involved in the procurement of ballistic missile technology. Bank of Dandong also facilitates financial activity for North Korean entities designated by the United States and listed by the United Nations for WMD proliferation, as well as for front companies acting on their behalf.

In particular, Bank of Dandong has facilitated financial activity for Korea Kwangson Banking Corporation (KKBC), a North Korean bank designated by the United States and listed by the United Nations for providing financial services in support of North Korean WMD proliferators. As of May 2012, KKBC had a representative embedded at Bank of Dandong. Moreover, Bank of Dandong maintained a direct correspondent banking relationship with KKBC since approximately 2013, when another Chinese bank ended a similar correspondent relationship. As of early 2016, KKBC maintained multiple bank accounts with Bank of Dandong.

Bank of Dandong has also facilitated financial activity for the Korea Mining Development Trading Corporation (KOMID), a U.S.- and UN-designated entity. As of early 2016, a front company for KOMID maintained multiple bank accounts with Bank of Dandong. The President subjected KOMID to an asset blocking by listing it in the Annex of Executive Order 13382 in 2005, and the United States designated KOMID pursuant to Executive Order 13687 in January 2015 for being North Korea's primary arms dealer and its main exporter of goods and equipment related to ballistic missiles and conventional weapons.

FinCEN is concerned that Bank of Dandong uses the U.S. financial system to facilitate financial activity for KKBC and KOMID, as well as other entities connected to North Korea's WMD and ballistic missile programs. Based on FinCEN's analysis of financial transactional data provided to FinCEN by U.S. financial institutions pursuant to the BSA as well as other information available to the agency, FinCEN assesses that at least 17 percent of Bank of Dandong customer transactions conducted through the bank's U.S. correspondent accounts from May 2012 to May 2015 were conducted by companies that have transacted with, or on behalf of, U.S.- and UN-sanctioned North Korean entities, including designated North Korean financial institutions and WMD proliferators. In addition, U.S. banks have identified a substantial amount of suspicious activity processed by Bank of Dandong, including: 1. Transactions that have no apparent economic, lawful, or business purpose and may be tied to sanctions evasion; 2. transactions that have a possible North Korean nexus and include activity between unidentified companies and individuals and behavior indicative of shell company activity; and 3. transactions that include transfers from offshore accounts with apparent shell companies that are domiciled in financial secrecy jurisdictions and banking in another country.

FinCEN is also concerned that, until recently, an entity designated by the United States for its ties to North Korea's WMD proliferation maintained an ownership stake in Bank of Dandong. Specifically, this entity, Dandong Hongxiang Industrial Development Co. Ltd. (DHID), maintained a minority ownership interest in Bank of Dandong until December 2016. The United States designated DHID in 2016 for acting for, or on behalf of, KKBC, the U.S.- and UN-designated North Korean bank with which Bank of Dandong maintained a direct relationship since approximately 2013. FinCEN believes that DHID's ownership stake in Bank of Dandong allowed DHID to access the U.S. financial system through the bank. Based on FinCEN's analysis of financial transactional data provided to FinCEN by U.S. financial institutions pursuant to the BSA, Bank of Dandong processed approximately $56 million through U.S. banks for DHID between October 2012 and December 2014. Even though DHID may no longer maintain an ownership stake in Bank of Dandong, FinCEN is concerned that the close relationship between the two entities helped establish Bank of Dandong as a prime conduit for North Korean activity.

Moreover, FinCEN believes that illicit financial activity involving North Korea continues to infiltrate the U.S. and international financial systems through Bank of Dandong.

*2. The Extent to Which Bank of Dandong Is Used for Legitimate Business Purposes*

According to commercial database research, Bank of Dandong is ranked as the 148th-largest financial institution out of a total of 196 financial institutions in China's banking sector. Based on FinCEN's analysis of financial transactional data provided to FinCEN by U.S. financial institutions pursuant to the BSA, Bank of Dandong processed over $2.5 billion in U.S. dollar transactions between May 2012 and May 2015 through its U.S. correspondent accounts, including at least $786 million in customer transactions for businesses and individuals (the remaining transactions comprised bank-to-bank transactions). This $786 million in financial activity consisted largely of letters of credit satisfaction, invoice payments, currency exchange activity, and transfers between individuals, which could be indicative of legitimate business activity. Nonetheless, FinCEN assesses that the $786 million in financial activity includes transactions conducted by companies that have transacted with, or on behalf of, U.S.- and UN-sanctioned North Korean entities. FinCEN is concerned that the existence of relationships between designated North Korean entities and Bank of Dandong suggests that the bank likely processes more transactions for North Korean-related front companies than what FinCEN is currently able to identify. Consequently, the exposure of U.S. financial institutions to North Korea's illicit financial activity via Bank of Dandong outweighs concerns for any legitimate business activity at the bank.

Moreover, Bank of Dandong maintains euro, Japanese yen, Hong Kong dollar, pound sterling, and Australian dollar correspondent accounts that would not be affected by this action. A prohibition under the fifth special measure would not prevent Bank of Dandong from conducting legitimate business activities in other foreign currencies so long as such activity does not involve a correspondent account maintained in the United States. Bank of Dandong would, therefore, still have other avenues through which it could provide services.

*3. The Extent to Which This Action is Sufficient To Guard Against International Money Laundering and Other Financial Crimes*

A prohibition under the fifth special measure would sufficiently guard against international money laundering and other financial crimes related to Bank of Dandong by restricting the ability of Bank of Dandong to access the U.S. financial system to process transactions for entities connected to the proliferation of WMDs and ballistic missiles. Given the national security threat posed by such activity, FinCEN views this action as necessary to prevent Bank of Dandong from continuing to access the U.S. financial system.

## V. Proposed Prohibition on Covered Financial Institutions From Opening or Maintaining Correspondent Accounts in the United States for Bank of Dandong

After performing the requisite interagency consultations, considering the relevant factors, and making a finding that Bank of Dandong is a financial institution of primary money laundering concern, FinCEN proposes a prohibition under the fifth special measure. A prohibition under the fifth special measure is the most effective and practical measure to safeguard the U.S. financial system from the illicit finance risks posed by Bank of Dandong.

### *1. Factors Considered in Proposing a Prohibition Under the Fifth Special Measure*

Below is a discussion of the relevant factors FinCEN considered in proposing a prohibition under the fifth special measure with respect to Bank of Dandong.

#### A. Whether Similar Action Has Been or Will Be Taken by Other Nations or Multilateral Groups Against Bank of Dandong

FinCEN is not aware of any other nation or multilateral group that has taken or is taking similar action regarding Bank of Dandong. The international community has, however, taken a series of steps to address the illicit financial threats emanating from North Korea, for which Bank of Dandong serves as a conduit. Between 2006 and 2016, the UNSC adopted multiple resolutions that generally restrict North Korea's financial activities related to its nuclear and missile programs and conventional arms sales. In March 2016, the UNSC unanimously adopted UNSCR 2270, which contains provisions that generally require nations to: 1. Prohibit North Korean banks from opening branches in their territory or engaging in certain correspondent relationships with these banks; 2. terminate existing representative offices or subsidiaries, branches, and correspondent accounts with North Korean financial institutions; and 3. prohibit their financial institutions from opening new representative offices or subsidiaries, branches, or bank accounts in North Korea. Additionally, UNSCR 2321, unanimously adopted by the UNSC in November 2016, requires nations to close existing representative offices or subsidiaries, branches, or bank accounts in North Korea within 90 days and expel individuals working on behalf of, or at the direction of, a North Korean bank or financial institution.

Similarly, the Financial Action Task Force (FATF) has emphasized its concerns regarding the threat posed by North Korea's illicit activities related to the proliferation of WMDs and related financing. Reiterating the UNSCR requirements, the FATF called upon its members and urged all jurisdictions to take the necessary measures to close existing branches, subsidiaries, and representative offices of North Korean banks within their territories and terminate correspondent relationships with North Korean banks, where required by relevant UNSC Resolutions.

Despite these measures, North Korea continues to use the U.S. and international financial systems through front companies and other surreptitious means. It is necessary to protect the U.S. financial system, directly and indirectly, from banks like Bank of Dandong that facilitate such access. Moreover, given the interconnectedness of the global financial system, the potential for Bank of Dandong to access the U.S. financial system indirectly, including through the use of nested correspondent accounts, exposes the U.S. financial system to the risks associated with conducting transactions with entities operating for, or on behalf of, North Korea.

#### B. Whether the Imposition of the Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

A prohibition under the fifth special measure would not cause a significant competitive disadvantage or place an undue cost or burden on U.S. financial institutions. Pursuant to sanctions administered by OFAC, U.S. financial institutions are currently subject to a range of prohibitions related to financial activity involving North Korea. Accordingly, a prohibition on covered financial institutions from opening or maintaining correspondent accounts for, or on behalf of, a bank that facilitates North Korean financial activity would not create any competitive disadvantage for U.S. financial institutions.

Similarly, the proposed due diligence obligations would not create any undue costs or burden on U.S. financial institutions. U.S. financial institutions already generally have systems in place to screen transactions in order to identify and report suspicious activity and comply with the sanctions programs administered by OFAC. Institutions can modify these systems to detect transactions involving Bank of Dandong. While there may be some additional burden in conducting due diligence on foreign correspondent account holders and notifying them of the prohibition (as described below), any such burden will likely be minimal, and certainly not undue, given the national security threat posed by Bank of Dandong's facilitation of activity for front companies associated with North Korea, some of which are involved in activities that support the proliferation of WMD or missiles.

#### C. The Extent to Which the Proposed Action or Timing of the Action Will Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Bank of Dandong

Bank of Dandong is a relatively small financial institution in China's banking sector, is not a major participant in the international payment system, and is not relied upon by the international banking community for clearance or settlement services. Therefore, a prohibition under the fifth special measure with respect to Bank of Dandong will not have an adverse systemic impact on the international payment, clearance, and settlement system.

FinCEN also considered the extent to which this action could have an impact on the legitimate business activities of Bank of Dandong and has concluded that the need to protect the U.S. financial system from banks that facilitate North Korea's illicit financial activity strongly outweighs any such impact. Financial transactional data provided to FinCEN by U.S. financial institutions pursuant to the BSA indicates that Bank of Dandong's financial activity conducted through its U.S. correspondent accounts has consisted largely of letters of credit satisfaction, invoice payments, currency exchange activity, and transfers between individuals, which could be indicative of legitimate business activity. Nonetheless, FinCEN assesses that this financial activity also includes transactions conducted by companies that have transacted with, or on behalf of, entities that threaten the national security of the United States.

As stated above, Bank of Dandong maintains euro, Japanese yen, Hong Kong dollar, pound sterling, and Australian dollar correspondent accounts. A prohibition under the fifth special measure would not prevent Bank of Dandong from conducting legitimate business activities in other foreign currencies so long as such activity does not involve a correspondent account maintained in the United States. Bank of Dandong

would, therefore, still have other avenues through which it could provide legitimate services.

D. The Effect of the Proposed Action on United States National Security and Foreign Policy

Excluding from the U.S. financial system foreign banks that serve as conduits for significant money laundering activity, for the financing of WMDs or their delivery systems, and for other financial crimes enhances national security by making it more difficult for proliferators and money launderers to access the U.S. financial system. As Bank of Dandong has been used to facilitate financial activity related to North Korean entities designated by the United States and United Nations for WMD proliferation, the proposed rule, if finalized, would serve as an additional measure to prevent North Korea from accessing the U.S. financial system and would both support and uphold U.S. national security and foreign policy goals. A prohibition under the fifth special measure would also complement the U.S. Government's worldwide efforts to expose and disrupt international money laundering.

*2. Consideration of Alternative Special Measures*

Under Section 311, special measures one through four enable FinCEN to impose additional recordkeeping, information collection, and information reporting requirements on covered financial institutions. The fifth special measure enables FinCEN to impose conditions as an alternative to a prohibition on the opening or maintaining of correspondent accounts. FinCEN considered these alternatives to a prohibition under the fifth special measure, but believes that a prohibition under the fifth special measure would most effectively safeguard the U.S. financial system from the illicit finance risks posed by Bank of Dandong.

North Korea is subject to numerous U.S. and UN sanctions, and it has also been consistently identified by the Financial Action Task Force for its anti-money laundering deficiencies. Further, FinCEN has issued three advisories since 2005 detailing its concerns surrounding the deceptive financial practices used by North Korea and North Korean entities and calling on U.S. financial institutions to take appropriate risk mitigation measures.

Despite these measures, North Korea continues to access the international financial system to support its WMD and conventional weapons programs through its use of aliases, agents, foreign individuals in multiple jurisdictions, and a long-standing network of front companies. Given Bank of Dandong's apparent disregard for numerous international calls to prevent North Korean illicit financial activity, FinCEN does not believe that any condition, additional recordkeeping requirement, or reporting requirement would be an effective measure to safeguard the U.S. financial system. Such measures would not prevent Bank of Dandong from accessing, directly or indirectly, the correspondent accounts of U.S. financial institutions, thus leaving the U.S. financial system vulnerable to processing illicit transfers that pose a national security risk. In addition, no recordkeeping requirement or conditions on correspondent accounts would be sufficient to guard against the risks posed by a bank that processes transactions that are designed to obscure their involvement with North Korea, and are ultimately for the benefit of sanctioned entities. Therefore, a prohibition under the fifth special measure is the only special measure that can adequately protect the U.S. financial system from the illicit finance risks posed by Bank of Dandong.

## VI. Section-by-Section Analysis for the Proposal of a Prohibition Under the Fifth Special Measure

*1010.660(a)—Definitions*

1. Bank of Dandong

The proposed rule defines ''Bank of Dandong'' to mean all subsidiaries, branches, offices, and agents of Bank of Dandong Co., Ltd. operating in any jurisdiction.

2. Correspondent Account

The proposed rule defines ''Correspondent account'' to have the same meaning as the definition contained in 31 CFR 1010.605(c)(1)(ii). In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions, including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of ''account'' for purposes of this proposed rule as was established for depository institutions in the final rule implementing the provisions of Section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[11] Under this definition, ''payable through accounts'' are a type of correspondent account.

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies (''mutual funds''), FinCEN is also using the same definition of ''account'' for purposes of this proposed rule as was established for these entities in the final rule implementing the provisions of Section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[12]

3. Covered Financial Institution

The proposed rule defines ''covered financial institution'' with the same definition used in the final rule implementing the provisions of Section 312 of the USA PATRIOT Act, which in general includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));
- a commercial bank;
- an agency or branch of a foreign bank in the United States;
- a Federally insured credit union;
- a savings association;
- a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- a trust bank or trust company;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker-commodities; and
- a mutual fund.

4. Foreign Banking Institution

The proposed rule defines ''foreign banking institution'' to mean a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law. This is consistent with the definition of ''foreign bank'' under 31 CFR 1010.100(u).

5. Subsidiary

The proposed rule defines ''subsidiary'' to mean a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

[11] *See* 31 CFR 1010.605(c)(2)(i).

[12] *See* 31 CFR 1010.605(c)(2)(ii)–(iv).

*1010.660(b)—Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions*

1. Prohibition on Opening or Maintaining Correspondent Accounts

Section 1010.660(b)(1) and (2) of this proposed rule would prohibit covered financial institutions from opening or maintaining in the United States a correspondent account for, or on behalf of, Bank of Dandong. It would also require covered financial institutions to take reasonable steps to not process a transaction for the correspondent account of a foreign banking institution in the United States if such a transaction involves Bank of Dandong. Such reasonable steps are described in 1010.660(b)(3), which sets forth the special due diligence requirements a covered financial institution would be required to take when it knows or has reason to believe that a transaction involves Bank of Dandong.

2. Special Due Diligence for Correspondent Accounts

As a corollary to the prohibition set forth in section 1010.660(b)(1) and (2), section 1010.660(b)(3) of the proposed rule would require covered financial institutions to apply special due diligence to all of their foreign correspondent accounts that is reasonably designed to guard against such accounts being used to process transactions involving Bank of Dandong. As part of that special due diligence, covered financial institutions would be required to notify those foreign correspondent account holders that the covered financial institutions know or have reason to believe provide services to Bank of Dandong that such correspondents may not provide Bank of Dandong with access to the correspondent account maintained at the covered financial institution. A covered financial institution may satisfy this notification requirement using the following notice:

Notice: Pursuant to U.S. regulations issued under Section 311 of the USA PATRIOT Act, see 31 CFR 1010.660, we are prohibited from opening or maintaining in the United States a correspondent account for, or on behalf of, Bank of Dandong. The regulations also require us to notify you that you may not provide Bank of Dandong, including any of its subsidiaries, branches, offices, or agents with access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving Bank of Dandong, including any of its subsidiaries, branches, offices, or agents, we will be required to take appropriate steps to prevent such access, including terminating your account.

The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving Bank of Dandong from accessing the U.S. financial system. FinCEN does not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement.

Methods of compliance with the notice requirement could include, for example, transmitting a notice by mail, fax, or email. The notice should be transmitted whenever a covered financial institution knows or has reason to believe that a foreign correspondent account holder provides services to Bank of Dandong.

Special due diligence also includes implementing risk-based procedures designed to identify any use of correspondent accounts to process transactions involving Bank of Dandong. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed Bank of Dandong as the financial institution of the originator or beneficiary, or otherwise referenced Bank of Dandong in a manner detectable under the financial institution's normal screening mechanisms. An appropriate screening mechanism could be the mechanisms used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC.

3. Recordkeeping and Reporting

Section 1010.660(b)(4) of the proposed rule would clarify that the proposed rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the notification requirement described above.

## VII. Request for Comments

FinCEN invites comments on all aspects of the proposal to impose a prohibition under the fifth special measure with respect to Bank of Dandong and specifically invites comments on the following matters:

1. FinCEN's proposal of a prohibition under the fifth special measure under 31 U.S.C. 5318A(b), as opposed to special measures one through four or imposing conditions under the fifth special measure;

2. The form and scope of the notice to certain correspondent account holders that would be required under the rule; and

3. The appropriate scope of the due diligence requirements in this proposed rule.

## VIII. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

*1. Proposal To Prohibit Covered Financial Institutions From Opening or Maintaining Correspondent Accounts With Certain Foreign Banks Under the Fifth Special Measure*

A. Estimate of the Number of Small Entities to Whom the Proposed Fifth Special Measure Will Apply

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $550,000,000 in assets.[13] Of the estimated 6,192 banks, 80 percent have less than $550,000,000 in assets and are considered small entities.[14] Of the estimated 6,021 credit unions, 92.5 percent have less than $550,000,000 in assets.[15]

Broker-dealers are defined in 31 CFR 1010.100(h) as those broker-dealers required to register with the Securities and Exchange Commission (SEC). For the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the Small Business Administration (SBA). The SEC has defined the term small entity to mean a broker or dealer that: 1. Had total capital (net worth plus subordinated liabilities) of less than

[13] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* Small Business Administration Size Standards (SBA Feb. 26, 2016) [hereinafter ''*SBA Size Standards*'']. (*https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*).

[14] Federal Deposit Insurance Corporation, *Find an Institution, http://www2.fdic.gov/idasp/main.asp; select* Size or Performance: Total Assets, *type* Equal or less than $: ''550000'' and *select* Find.

[15] National Credit Union Administration, *Credit Union Data, http://webapps.ncua.gov/customquery/; select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: ''550000000'' and *select* Go.

$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and 2. is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.[16] Based on SEC estimates, 17 percent of broker-dealers are classified as small entities for purposes of the RFA.[17]

Futures commission merchants (FCMs) are defined in 31 CFR 1010.100(x) as those FCMs that are registered or required to be registered as a FCM with the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act (CEA), except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC's definition of small business as previously submitted to the SBA. In the CFTC's ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act,'' the CFTC concluded that registered FCMs should not be considered to be small entities for purposes of the RFA.[18] The CFTC's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC.

For purposes of the RFA, an introducing broker-commodities dealer is considered small if it has less than $38,500,000 in gross receipts annually.[19] Based on information provided by the National Futures Association (NFA), 95 percent of introducing brokers-commodities dealers have less than $38.5 million in adjusted net capital and are considered to be small entities.

Mutual funds are defined in 31 CFR 1010.100(gg) as those investment companies that are open-end investment companies that are registered or are required to register with the SEC. For the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the SBA. The SEC has defined the term ''small entity'' under the Investment Company Act to mean ''an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.'' [20] Based on SEC estimates, seven percent of mutual funds are classified as ''small entities'' for purposes of the RFA under this definition.[21]

As noted above, 80 percent of banks, 92.5 percent of credit unions, 17 percent of broker-dealers, 95 percent of introducing broker-commodities dealers, no FCMs, and seven percent of mutual funds are small entities.

B. Description of the Projected Reporting and Recordkeeping Requirements of a Prohibition Under the Fifth Special Measure

The proposed prohibition under the fifth special measure could require covered financial institutions to provide a notification intended to aid cooperation from foreign correspondent account holders in preventing transactions involving Bank of Dandong from being processed by the U.S. financial system. FinCEN estimates that the burden on institutions providing this notice is one hour.

Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to process transactions involving Bank of Dandong. All U.S. persons, including U.S. financial institutions, currently must comply with OFAC sanctions, and U.S. financial institutions have suspicious activity reporting requirements. The systems that U.S. financial institutions have in place to comply with these requirements can easily be modified to adapt to this proposed rule. Thus, the special due diligence that would be required under the proposed rule—*i.e.,* preventing the processing of transactions involving Bank of Dandong and the transmittal of notice to certain correspondent account holders—would not impose a significant additional economic burden upon small U.S. financial institutions.

*2. Certification*

For these reasons, FinCEN certifies that the proposals contained in this rulemaking would not have a significant impact on a substantial number of small businesses.

FinCEN invites comments from members of the public who believe there would be a significant economic impact on small entities from the imposition of a prohibition under the fifth special measure regarding Bank of Dandong.

## IX. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by email to *oirasubmission@omb.eop.gov*) with a copy to FinCEN by mail or email at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by September 5, 2017. In accordance with the requirements of the Paperwork Reduction Act and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 1010.660 is presented to assist those persons wishing to comment on the information collection.

The notification requirement in section 1010.660(b)(3)(i)(A) is intended to aid cooperation from correspondent account holders in denying Bank of Dandong access to the U.S. financial system. The information required to be maintained by that section would be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.660. The collection of information would be mandatory.

*Description of Affected Financial Institutions:* Banks, broker-dealers in securities, futures commission merchants and introducing brokers-commodities, money services businesses, and mutual funds.

*Estimated Number of Affected Financial Institutions:* 5,000.

*Estimated Average Annual Burden in Hours Per Affected Financial Institution:* The estimated average burden associated with the collection of information in this proposed rule is one hour per affected financial institution.

*Estimated Total Annual Burden:* 5,000 hours.

*FinCEN specifically invites comments on:* 1. Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information would have practical

[16] 17 CFR 240.0–10(c).

[17] 76 FR 37572, 37602 (June 27, 2011) (the SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers).

[18] 47 FR 18618, 18619 (Apr. 30, 1982).

[19] SBA, Size Standards to Define Small Business Concerns, 13 CFR 121.201 (2016), at 28.

[20] 17 CFR 270.0–10.

[21] 78 FR 23637, 23658 (April 19, 2013).

utility; 2. the accuracy of FinCEN's estimate of the burden of the proposed collection of information; 3. ways to enhance the quality, utility, and clarity of the information required to be maintained; 4. ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

**X. Executive Order 12866**

Executive Orders 12866 and 13563 direct agencies to assess 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. It has been determined that the proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

**List of Subjects in 31 CFR Part 1010**

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Foreign banking.

**Authority and Issuance**

For the reasons set forth in the preamble, part 1010, chapter X of title 31 of the Code of Federal Regulations, is proposed to be amended as follows:

## PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; Title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; sec. 701 Pub. L. 114–74, 129 Stat. 599.

■ 2. Add § 1010.660 to read as follows:

**§ 1010.660 Special measures against Bank of Dandong.**

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

(1) *Bank of Dandong* means all subsidiaries, branches, offices, and agents of Bank of Dandong Co., Ltd. operating in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(1).

(4) *Foreign banking institution* means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

(5) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Prohibition on accounts and due diligence requirements for covered financial institutions*—(1) *Opening or maintaining correspondent accounts for Bank of Dandong.* A covered financial institution shall not open or maintain in the United States a correspondent account for, or on behalf of, Bank of Dandong.

(2) *Prohibition on use of correspondent accounts involving Bank of Dandong.* A covered financial institution shall take reasonable steps to not process a transaction for the correspondent account of a foreign banking institution in the United States if such a transaction involves Bank of Dandong.

(3) *Special due diligence of correspondent accounts to prohibit use.*

(i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Bank of Dandong. At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to believe provide services to Bank of Dandong that such correspondents may not provide Bank of Dandong with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by Bank of Dandong, to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving Bank of Dandong.

(iii) A covered financial institution that knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process transactions involving Bank of Dandong shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(3)(i)(A) of this section and, where necessary, termination of the correspondent account.

(4) *Recordkeeping and reporting.*

(i) A covered financial institution is required to document its compliance with the notice requirement set forth in this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: June 29, 2017.

**Jamal El-Hindi,**

*Acting Director, Financial Crimes Enforcement Network.*

[FR Doc. 2017–14026 Filed 7–6–17; 8:45 am]

**BILLING CODE 4810–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Chapter I

### 46 CFR Chapters I and III

### 49 CFR Chapter IV

**[Docket No. USCG–2017–0480]**

## Evaluation of Existing Coast Guard Regulations, Guidance Documents, Interpretative Documents, and Collections of Information

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments; extension of comment period.

**SUMMARY:** We are extending the comment period on the subject request for comments that we published June 8, 2017. We are extending the deadline by 2 months because interested persons indicated they needed more time to respond. The comment period is now open through September 11, 2017.

**DATES:** Your comments and related material in response to our request for comments published June 8, 2017 (82 FR 26632) must now be received on or before September 11, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–

2017–0480 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email Mr. Adam Sydnor, Coast Guard; telephone 202–372–1490, email *HQS-SMB-REGreforminput@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard is extending the comment period on the request for comments entitled ''Evaluation of Existing Coast Guard Regulations, Guidance Documents, Interpretative Documents, and Collections of Information'' that we published in the **Federal Register** on June 8, 2017 (82 FR 26632). We are extending the comment period by 2 months to allow interested persons more time to comment. You may now submit comments through September 11, 2017.

In our June 8, 2017 request for comments, which is available via *www.regulations.gov* in docket USCG–2017–0480, we requested your comments on Coast Guard regulations, guidance documents, and interpretative documents that you believe should be repealed, replaced, or modified. Also, we welcome your comments on our approved collections of information, regardless of whether the collection is associated with a regulation. We took this action in response to Executive Orders 13771, Reducing Regulation and Controlling Regulatory Costs; 13777, Enforcing the Regulatory Reform Agenda; and 13783, Promoting Energy Independence and Economic Growth. We plan to use your comments to assist us in our work with the Department of Homeland Security's Regulatory Reform Task Force.

Your comments should help us with our ongoing task of identifying and alleviating unnecessary regulatory burdens. After assessing responses to our June 8 request for comments, we may issue a similar request for comments next year.

**Public Participation and Request for Comments**

If you submit a comment, please include the docket number for the notice requesting comments (USCG–2017–0480), indicate the specific regulation, guidance document, interpretative document, or collection of information you are commenting on, and provide a reason for each suggestion or recommendation. Please make your comments as specific as possible, and include any supporting data or other information, such as cost information, you may have. Also, if you are commenting on a regulation, please provide a **Federal Register** (FR) or Code of Federal Regulations (CFR) citation when referencing a specific regulation, and provide specific suggestions regarding repeal, replacement or modification.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Copies of Executive Orders 13771, 13777, and 13783, the June 8, 2017 request for comments, and all public comments are available in our online docket at *http://www.regulations.gov.*

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Although the Coast Guard will not respond to individual comments, we value your comments and will give careful consideration to them.

Dated: June 30, 2017.

**J.G. Lantz,**

*Senior Accountable Regulatory Official, Director of Commercial Regulations and Standards.*

[FR Doc. 2017–14254 Filed 7–6–17; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2017–0081; FRL–9964–50–Region 5]**

### Air Plan Approval; Wisconsin; Site-Specific Sulfur Dioxide Requirements for USG Interiors, LLC

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve under the Clean Air Act a State Implementation Plan (SIP) revision submitted by Wisconsin on January 31, 2017, and supplemented on March 20, 2017. This SIP submittal consists of Wisconsin Administrative Order AM–16–01, which imposes a requirement for a taller cupola exhaust stack, a sulfur dioxide ($SO_2$) emission limit in conjunction with a minimum cupola stack flue gas flow rate, and associated requirements on the mineral wool production process at the USG Interiors LLC facility located in Walworth, Wisconsin (USG-Walworth). Wisconsin submitted this SIP revision to enable the area near USG-Walworth to qualify for being designated ''attainment'' of the 2010 primary $SO_2$ National Ambient Air Quality Standards, a matter that will be addressed in a separate future rulemaking. EPA is approving AM–16–01 into the Wisconsin SIP, which makes the AM–16–01 requirements federally enforceable.

**DATES:** Comments must be received on or before August 7, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0081 at *http://www.regulations.gov,* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *Liljegren.Jennifer@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal**

**Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 20, 2017.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2017–14213 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2016–0561; FRL–9964–57–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Volatile Organic Compound Reasonably Available Control Technology for 1997 Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision pertains to the requirements for reasonably available control technology (RACT) controls for certain sources of volatile organic compounds (VOCs) under the 1997 ozone national ambient air quality standard (NAAQS). This SIP revision includes Pennsylvania's certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 1997 ozone NAAQS and a negative declaration that certain categories of sources do not exist in Pennsylvania. This SIP revision does not address Pennsylvania's May 2016 VOC and nitrogen oxides ($NO_X$) RACT rule, ''Additional RACT Requirements for Major Sources of $NO_X$ and VOCs,'' also known as RACT II. EPA will take separate action on RACT II. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by August 7, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0561 at *http://www.regulations.gov,* or via email to *stahl.cynthia@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. 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:** Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: June 22, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2017–14205 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

# Notices

Federal Register
Vol. 82, No. 129
Friday, July 7, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of July 19, 2017 Advisory Committee on Voluntary Foreign Aid Meeting

**AGENCY:** United States Agency for International Development.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

*Date:* Wednesday, July 19, 2017.

*Time:* 2:00–4:00 p.m.

*Location:* Horizon Ballroom, The Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Washington, DC 20004.

**Purpose**

The Advisory Committee on Voluntary Foreign Aid (ACVFA) brings together USAID and private voluntary organization officials, representatives from universities, international nongovernment organizations, U.S. businesses, and government, multilateral, and private organizations to foster understanding, communication, and cooperation in the area of foreign aid.

**Agenda**

USAID leadership will make opening remarks, followed by a panel discussion to explore possible approaches to reforming U.S. foreign assistance. The full meeting agenda will be forthcoming on the ACVFA Web site at *http://www.usaid.gov/who-we-are/organization/advisory-committee*.

**Stakeholders**

The meeting is free and open to the public. Persons wishing to attend should register online at *http://www.usaid.gov/who-we-are/organization/advisory-committee*.

**FOR FURTHER INFORMATION CONTACT:** Jessica Klein, *acvfa@usaid.gov*.

**Jessica Klein,**

*Acting Executive Director, U.S. Agency for International Development.*

[FR Doc. 2017–14288 Filed 7–6–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0056]**

### Availability of a Final Environmental Assessment and Finding of No Significant Impact for the Field Release of Genetically Engineered Diamondback Moths

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has prepared a final environmental assessment and finding of no significant impact and will issue a permit for the field release of diamondback moths that have been genetically engineered for repressible female lethality, also known as female autocide. Based on its finding of no significant impact, APHIS has determined that an environmental impact statement need not be prepared.

**FOR FURTHER INFORMATION CONTACT:** Ms. Chessa Huff-Woodard, Esq., Policy, Program and International Collaboration Chief, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3943, email: *chessa.d.huff-woodard@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:** On April 19, 2017, we published in the **Federal Register** (82 FR 18416–18417, Docket No. APHIS–2014–0056) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed field release of diamondback moths that have been genetically engineered for repressible female lethality, also known as female autocide.

We solicited comments on the EA for 30 days ending May 19, 2017. We received 670 comments by that date. Written responses to the comments we received on the EA can be found in the finding of no significant impact (FONSI).

In this document, we are advising the public of our finding of no significant impact regarding the field release of genetically engineered diamondback moths into the continental United States. The finding, which is based on the EA, reflects our determination that release of the genetically engineered diamondback moths will not have a significant impact on the quality of the human environment. Concurrent with this announcement, APHIS will issue a permit for the field release of the genetically engineered diamondback moth.

The EA and FONSI may be viewed on the *Regulations.gov* Web site (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 30th day of June 2017.

**Jere L. Dick,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2017–14345 Filed 7–6–17; 8:45 am]

**BILLING CODE 3410–34–P**

[1] To view the notice, environmental assessment, finding of no significant impact, and the comments we received, go to *https://www.regulations.gov/docket?D=APHIS-2014-0056*.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2017–0020]**

### Availability of FSIS Guidance for Importing Meat, Poultry, and Egg Products Into the United States

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing the availability of and requesting comment on guidance for importing meat, poultry, and egg products into the United States. This guidance is intended to help U.S. importers, customs brokers, official import inspection establishments, egg products plants, and other interested parties understand and comply with FSIS import requirements.

**DATES:** Submit comments on or before September 5, 2017.

**ADDRESSES:** A downloadable version of the guidance is available to view and print at *http://www.fsis.usda.gov/Regulations_&_Policies/Compliance_Guides_Index/index.asp.* No hard copies of the compliance guideline have been published.

FSIS invites interested persons to submit comments on issues discussed and outlined in this notice. Only comments addressing the scope of this notice will be considered.

Comments may be submitted by one of the following methods:

*Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov/.* Follow the on-line instructions at that site for submitting comments.

*Mail, CD–ROMs:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.

*Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163A, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2017–0020. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or to comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 164–A, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Roberta Wagner, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495, or by Fax: (202) 720–2025.

**SUPPLEMENTARY INFORMATION:**

#### Background

The U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) is the public health regulatory agency responsible for ensuring that domestic and imported meat, poultry, and egg products are safe, wholesome, and correctly labeled and packaged. FSIS inspects imported meat, poultry, and egg products under the authority of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (15 U.S.C. 1031 *et seq.*). Imported meat, poultry, and egg products must originate from eligible countries and from establishments or plants that are certified to export to the United States (21 U.S.C. 620, 466 and 1046). A country becomes eligible following an equivalence determination process completed by FSIS in coordination with the country's central competent authority (CCA). Foreign establishments or plants become eligible when the CCA certifies to FSIS that the establishments or plants meet requirements that are equivalent to FSIS requirements. All imported shipments of meat, poultry, and egg products must be presented to FSIS for inspection, with certain exceptions, as detailed in the guidance (*e.g.,* meat, poultry, or dried egg products shipment that does not exceed 50 pounds, for personal consumption only). This guidance summarizes existing requirements and best practices for complying with those requirements. FSIS encourages interested parties (*e.g.,* U.S. importers, brokers, official import inspection establishments, and egg products plants) to follow this guidance. This guidance represents current FSIS thinking, and FSIS will update it as necessary to reflect comments received and any additional information that becomes available. FSIS is seeking comments on this guidance as part of its efforts to continuously assess and improve the effectiveness of policy documents.

#### USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail*: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

*Fax*: (202) 690–7442.

*Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

#### Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: July 3, 2017.

**Alfred V. Almanza,**

*Administrator.*

[FR Doc. 2017–14287 Filed 7–6–17; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### United States Standards for Lentils

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Final Notice.

**SUMMARY:** This action is being taken under the authority of the Agricultural Marketing Act of 1946, as amended, (AMA). The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Lentils to establish an additional grading factor, definition, grade requirements, and visual reference images for ''wrinkled lentils,'' and establish a special grade, definition, special grade requirements, designation, and visual reference images for ''green lentils.'' GIPSA believes these revisions will improve the application of standards and facilitate the marketing of lentils.

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

**FOR FURTHER INFORMATION CONTACT:** Beverly A. Whalen at USDA, GIPSA, FGIS, 10383 N. Ambassador Drive, Kansas City, Missouri 64153; Telephone (816) 659–8410; Fax Number (816) 872–1258; email *Beverly.A.Whalen@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the AMA (7 U.S.C. § 1622(c)), directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' GIPSA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities.

Under the AMA, GIPSA establishes and maintains standards for graded commodities including rice, whole dry peas, split peas, feed peas, lentils, and beans. The AMA standards are voluntary and widely used in private contracts, government procurement, marketing communication, and/or consumer information. The standards serve as a common trading language to define commodity quality in the domestic and global marketplace.

**Background**

GIPSA engages in regular outreach with stakeholders to ensure commodity standards maintain relevance with the modern market. Lentil industry stakeholders include the USA Dry Pea and Lentil Council (USADPLC), a national organization of producers, processors, and exporters of U.S. dry peas, lentils, and chickpeas; the U.S. Dry Pea and Lentil Trade Association (USPLTA), a national association representing processors, traders, handlers and merchandisers, and transporters in the pea, lentil and chickpea industry; and, other handlers and merchandisers.

The United States Standards for Lentils are available on GIPSA's public Web site at: *https://www.gipsa.usda.gov/fgis/standards/lentils.pdf.* USADPLC and USPLTA reviewed the United States Standards for Lentils, which were last revised in 2008. The review resulted in those stakeholders jointly recommending that GIPSA revise the standards based on changing market trends. Specifically, these groups asked GIPSA to (1) establish a new grading factor of ''wrinkled lentils,'' and (2) establish a new special grade of ''green lentils.''

GIPSA provides official inspection procedures for lentils in the Pea and Lentil Handbook, which is available on GIPSA's public Web site at: *http://www.gipsa.usda.gov/Publications/fgis/handbooks/pealentil_insphb.html.*

**Establishment of Grading Factor ''Wrinkled Lentils''**

USADPLC and USPLTA reported on a trend of an increasing percentage of fully developed lentils that possess a wrinkled seed coat. These lentils do not meet the definition for immature lentils. Under the current United States Standards for Lentils, these lentils would grade U.S. #1; however, the wrinkled appearance is considered undesirable. The stakeholders jointly recommended that GIPSA establish a new grade determining factor ''wrinkled lentil,'' and also recommended factor limits for grades No's. 1, 2, and 3. GIPSA and the stakeholders worked collaboratively to develop a visual reference image that best reflects the ''wrinkled lentil'' condition. Additionally, stakeholders endorsed the following definition: *Wrinkled lentils* are sound lentils that are substantially wrinkled on at least 50 percent of one side.

**Establishment of Special Grade ''Green Lentils''**

The USPLTA Grades Committee members recommended that GIPSA establish a special grade, ''green lentils.'' Lentil stakeholders concurred on the need for a special grade to distinguish a desirable aesthetic feature. GIPSA and the stakeholders worked collaboratively to develop a visual reference image that best reflects the ''green lentils'' condition. Additionally, stakeholders endorsed the following definition: *Green lentils* are clear seeded (non-mottled) and possess a natural, uniformly green color.

**Comment Review**

GIPSA published a Notice in the **Federal Register** on May 15, 2017 (82 FR 22305), inviting interested parties to comment on the proposed revisions to the United States Standards for Lentils. Two comments were received from industry associations, supporting the proposed revisions. No adverse comments were received. Accordingly, the lentil standards are being revised as proposed in the May 15, 2017, notice. GIPSA believes that these revisions will facilitate use of the standards and better reflect current marketing practices. The revisions to the standards become effective August 1, 2017, and the Pea and Lentil Handbook will be revised to incorporate the revisions to the standards.

**Final Action**

GIPSA is revising the lentil standards to (1) establish a new grading factor, definition, factor limits, and visual reference image for wrinkled lentils; and (2) establish a special grade, definition, designation, and visual reference image for green lentils. Accordingly, the following sections of the United States Standards for Lentils under the AMA are amended: Section 601, Definitions, is amended to include the following definition: *Wrinkled lentils* are sound lentils that are substantially wrinkled on at least 50% of one side. Section 607, Grades and grade requirements for dockage-free lentils, is amended as follows:

607 GRADES AND GRADE REQUIREMENTS FOR DOCKAGE-FREE LENTILS

| Grading factors | Grades U.S. Nos. | | |
|---|---|---|---|
| | 1 | 2 | 3 |
| Defective Lentils | | | |
| Total [1] | 2.0 | 3.5 | 5.0 |
| Weevil-Damaged Lentils | 0.3 | 0.8 | 0.8 |
| Heat-Damaged Lentils | 0.2 | 0.5 | 1.0 |
| Foreign Material | | | |
| Total [2] | 0.2 | 0.5 | 0.5 |
| Stones | 0.1 | 0.2 | 0.2 |
| Skinned Lentils | 4.0 | 7.0 | 10.0 |
| Wrinkled Lentils [3] | 5.0 | 10.0 | >10.0 |
| Contrasting Lentils [4] | 2.0 | 4.0 | <4.0 |
| Inconspicuous Admixture | 0.5 | 0.8 | 1.0 |
| Minimum Requirements for Color | Good | Fair | Poor |

U.S. Sample grade are lentils that:
(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, or 3; or
(b) Contain more than 14.0 percent moisture, live weevils, or other live insects, metal fragments, broken glass, or a commercially objectionable odor; or
(c) Are materially weathered, heating, or distinctly low quality.

[1] Defective lentils total is weevil-damaged, heat-damaged, damaged, and split lentils combined.
[2] Foreign material total includes stones.
[3] Lentils with more than 10.0 percent wrinkled lentils shall grade no higher than U.S. No. 3.
[4] Lentils with more than 4.0 percent contrasting lentils shall grade no higher than U.S. No. 3.

Section 609, Special grades and requirements, is amended to include the following definition:

*Green lentils* are clear seeded (non-mottled) lentils possessing a natural, uniformly green color.

**Authority:** 7 U.S.C. 1621–1627.

**Randall D. Jones,**

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2017–14308 Filed 7–6–17; 8:45 am]

**BILLING CODE 3410–KD–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### United States Standards for Beans

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Final notice.

**SUMMARY:** This action is being taken under the authority of the Agricultural Marketing Act of 1946, as amended, (AMA). The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Beans to (1) establish a class and grade requirement chart for ''chickpea,'' also known as ''garbanzo bean,'' and (2) establish a new grade determining factor, definition, factor limits, and visual reference image for ''contrasting chickpeas.'' GIPSA believes these revisions will help facilitate the marketing of chickpeas and improve the application of the standards.

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

**FOR FURTHER INFORMATION CONTACT:** Beverly A. Whalen at USDA, GIPSA, FGIS, 10383 N. Ambassador Drive, Kansas City, Missouri 64153; Telephone (816) 659–8410; Fax Number (816) 872–1258; email *Beverly.A.Whalen@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the AMA (7 U.S.C. 1622(c)), directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' GIPSA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities.

Under the AMA, GIPSA establishes and maintains standards for graded commodities including rice, whole dry peas, split peas, feed peas, lentils, and beans. The AMA standards are voluntary and widely used in private contracts, government procurement, marketing communication, and/or consumer information. The standards serve as a common trading language to define commodity quality in the domestic and global marketplace.

#### Background

GIPSA engages in regular outreach with stakeholders to ensure commodity standards maintain relevance with the modern market. Chickpea industry stakeholders include the USA Dry Pea and Lentil Council (USADPLC), a national organization of producers, processors, and exporters of U.S. dry peas, lentils, and chickpeas; the U.S. Dry Pea and Lentil Trade Association (USPLTA), a national association representing processors, traders, handlers and merchandisers, and transporters in the pea, lentil and chickpea industry; and the US Dry Bean Council (USDBC) representing the U.S. dry bean industry, including growers, shippers, dealers, canners, and local and regional trade associations.

The United States Standards for Beans are available on GIPSA's public Web site at: *http://www.gipsa.usda.gov/fgis/standards/Bean-Standards.pdf.* USDPLC and USPLTA reviewed the United States Standards for Beans, which were last revised in 2008. Currently, chickpeas are graded under the Miscellaneous Bean standard. This is confusing to the market because GIPSA issues an ''AMA Commodity Inspection Certificate'' providing the commonly accepted commercial name, ''chickpea'' or ''garbanzo'' as the class on the certificate grade line. Specifically, industry stakeholders asked GIPSA to (1) establish a class and grade requirement chart for ''chickpeas,'' (2) use the terms ''chickpeas'' and ''garbanzo beans'' interchangeably, and (3) establish a new grade determining factor, definition, factor limits, and visual reference image for ''contrasting chickpeas.''

GIPSA provides official inspection procedures for beans in the Bean

Handbook, found on GIPSA's public Web site at: *https://www.gipsa.usda.gov/fgis/handbook/BeanHB/BeanHandbook_2016-02-23.pdf.*

**Establishment of Class ''Chickpeas'' and Grade Requirements**

The stakeholders jointly recommended that GIPSA establish a new class and grade requirement chart for ''chickpea,'' and also recommended a new grade determining factor, definition, and factor limits for grades No's 1, 2, and 3 for ''contrasting chickpeas.'' GIPSA and these stakeholders collaborated to develop a visual reference image that best reflects the ''contrasting chickpeas'' condition. Additionally, the stakeholders endorsed the following definition: *Contrasting chickpeas* are chickpeas that differ substantially in shape or color.

**Comment Review**

GIPSA published a Notice in the **Federal Register** on May 15, 2017 (82 FR 22306), inviting interested parties to comment on the proposed revisions to the U.S. Standards for Beans. One comment was received, which was supportive of proposed revisions. GIPSA did not receive adverse comments. Accordingly, the bean standards are revised as published in this final notice, with a technical correction in the table in new Section 135.

Section 135 is corrected to remove footnote 3 that appeared in the May 15, 2017, Notice for Comment inviting public comment. The footnote stated ''[3] Beans with more than 5.0 percent contrasting chickpeas are graded mixed beans.'' The footnote was errantly included in the table. Contrasting chickpeas are not counted toward mixed beans, thus the footnote should not have appeared in the table.

GIPSA believes these revisions will facilitate the use of the standards and better reflect current marketing practices. The revisions to the standards are effective August 1, 2017. The Bean Handbook will be revised to incorporate the revisions to the standards.

**Final Action**

GIPSA is revising the bean standards to (1) establish a class and grade requirement chart for chickpeas, and (2) establish a new grade determining factor, definition, factor limits, and visual reference image for contrasting chickpeas.

Under *Terms Defined:*

Section 102, Classes, is amended to include Chickpeas (Garbanzo Beans).

A new Section 122 is added. *Contrasting chickpeas* are chickpeas that differ substantially in shape or color.

Under *Principles Governing Application of the Standards:*

Current Sections 122, 123, and 124 are renumbered to 123, 124, and 125 with no change to the text.

Under *Grades, Grade Requirements, Grade Designations, Special Grades, and Special Grade Requirements:*

Current Sections 125, 126, 127, 128, 129, 130, 131, 132, 133 are renumbered to 126, 127, 128, 129, 130, 131, 132, 133, 134, with no change to the text.

A new Section 135, Grade and grade requirements for the class Chickpeas (Garbanzo Beans) is added.

Current Sections 134 and 135 are renumbered to 136 and 137, respectively, with no change to the text.

135 GRADES AND GRADE REQUIREMENTS FOR THE CLASS CHICKPEA

[Garbanzo bean]

| Grade | Percent maximum limits of— | | | | | | |
|---|---|---|---|---|---|---|---|
| | Moisture [1] | Total defects (total damaged, total foreign material, contrasting classes, & splits) | Total damaged | Foreign material | | Contrasting classes [2] | Contrasting chickpeas |
| | | | | Total (including stones) | Stones | | |
| U.S. No. 1 | 18.0 | 2.0 | 2.0 | 0.5 | 0.2 | 0.5 | 1.0 |
| U.S. No. 2 | 18.0 | 4.0 | 4.0 | 1.0 | 0.4 | 1.0 | 2.0 |
| U.S. No. 3 | 18.0 | 6.0 | 6.0 | 1.5 | 0.6 | 2.0 | 5.0 |

*U.S. Substandard* are beans that do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans that are not well screened must also be U.S. Substandard, except for beans that meet the requirements for U.S. Sample grade.

*U.S. Sample grade* are beans that are musty, sour, heating, materially weathered, or weevily; have any commercially objectionable odor; contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or are otherwise of distinctly low quality.

[1] Beans with more than 18.0 percent moisture are graded high moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded mixed beans.

**Authority:** 7 U.S.C. 1621–1627.

**Randall D. Jones,**

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2017–14309 Filed 7–6–17; 8:45 a.m.]

**BILLING CODE 3410–KD–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of Commission Business Meeting.

**DATES:** Friday, July 14, 2017, at 10:00 a.m. EST.

**ADDRESSES:** National Place Building, 1331 Pennsylvania Ave. NW., 11th Floor, Suite 1150, Washington, DC 20245 (Entrance on F Street NW).

**FOR FURTHER INFORMATION CONTACT:** Brian Walch, phone: (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

**SUPPLEMENTARY INFORMATION:** This business meeting is open to the public. There will also be a call-in line for individuals who desire to listen to the presentations: (888) 504–7958; Conference ID 790–7062. Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least three business days before the scheduled date of the meeting.

**Meeting Agenda**

I. Approval of Agenda
II. Business Meeting
A. Discussion and Vote on 2018 Business Meeting Dates
B. State Advisory Committees
• Presentation by Ms. Diane Citrino, Chair of the Ohio Advisory Committee, on its report on Human Trafficking in Ohio
• Presentation by Mr. Wendell Blaylock, Chair of the Nevada Advisory Committee, on its Advisory Memorandum on Municipal Fines and Fees in Nevada
C. Management and Operations
• Staff Director's Report
D. Presentation on the Americans with Disabilities Act by Rebecca Cokley, Executive Director, the National Council on Disability
III. Adjourn Meeting

Dated: July 5, 2017.

**Brian Walch,**

*Director, Communications and Public Engagement.*

[FR Doc. 2017–14386 Filed 7–5–17; 4:15 pm]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Submission for OMB Review; Comment Request; Correction

This is a correction to FR 2017–13778, which should have listed Census as the submitting agency instead of the Department of Commerce. The remainder of the document as published on June 30, 2017 (82 FR 29843) is republished in its entirety below.

Under 44 U.S.C. 3506(e) and 13 U.S.C. Section 9, the U.S. Census Bureau is seeking comments on revisions to the confidentiality pledge it provides to its respondents under Title 13, United States Code, Section 9. These revisions are required by the passage and implementation of provisions of the Federal Cybersecurity Enhancement Act of 2015 (6 U.S.C. 1501 note), which require the Secretary of Homeland Security to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. More details on this announcement are presented in the **SUPPLEMENTARY INFORMATION** section below. The previous notice for public comment, titled ''Agency Information Collection Activities; Request for Comments; Revision of the Confidentiality Pledge under Title 13 United States Code, Section 9'' was published in the **Federal Register** on December 23, 2016 (Vol. 81, No. 247, pp. 94321–94324), allowing for a 60 day comment period. The Census Bureau received two comments, which are addressed within this notice.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On December 18, 2015, Congress passed the Federal Cybersecurity Enhancement Act of 2015 (the Act) (6 U.S.C. 1501 note). The Act requires the Department of Homeland Security to deploy for use by other agencies a program with the ''capability to detect cybersecurity risks in network traffic transiting or traveling to or from an agency information system.'' [1] The Act requires each agency to ''apply and continue to utilize the capabilities to all information traveling between an agency information system and any information system other than an agency information system.'' [2] The DHS program is known as EINSTEIN, and DHS currently operates version 3A (E3A).

Importantly, the Act provides that DHS may use the information collected through EINSTEIN ''only to protect information and information systems from cybersecurity risks.'' [3] The Act does not authorize DHS to use information collected through EINSTEIN for any other purposes, including law enforcement purposes.

In response to the passage of the Act, the Census Bureau considered whether it should revise its confidentially pledge. The Census Bureau's Center for Survey Measurement (CSM) joined the interagency Statistical Community of Practice and Engagement (SCOPE) Confidentiality Pledge Revision Subcommittee, which developed and evaluated the revision to the confidentiality pledge language. SCOPE and CSM conducted remote and in-person cognitive testing of the potential revised confidentiality pledge. The Census Bureau based its revised confidentiality pledge on the results of these tests. The revised confidentiality pledge utilizes the language the Census Bureau determined would best communicate the essential information to respondents while not negatively affecting response rates. The following is the revised statistical confidentiality pledge for the Census Bureau's data collections:

*The U.S. Census Bureau is required by law to protect your information. The Census Bureau is not permitted to publicly release your responses in a way that could identify you. Per the Federal Cybersecurity Enhancement Act of 2015, your data are protected from cybersecurity risks through screening of the systems that transmit your data.*

On December 23, 2016, the Census Bureau requested comments on the revised confidentiality pledge. During the public comment period, the Census Bureau received two comments from the Asian Americans Advancing Justice (AAJC) and American-Arab Anti-Discrimination Committee (ADC).

#### II. Comments and Responses

In response to the Census Bureau's revised confidentiality pledge, AAJC and the ADC provided comments and suggestions to the Census Bureau. These comments and suggestions, along with the Census Bureau's responses are below.

1. The AAJC and the ADC both expressed concerns about the effect of the revised confidentiality pledge on the accuracy of the results of the Census Bureau's survey.

*Response:* The Census Bureau is committed to collecting the most complete and accurate data. The Census Bureau takes the collection and protection of respondent information very seriously and has since the first Decennial Census in 1790. As a statistical agency committed to ensuring the collection and publication of accurate data, the Census Bureau continually conducts extensive research and testing to inform census and survey design. This research and testing confirms key technologies, outreach and promotional strategies, data collection methods, and management and response processes to allow the Census Bureau to maximize response rates and ensure the accuracy of the data collected. We also uphold a strong data stewardship culture to ensure that any decisions we make will fulfill our legal and ethical obligations to respect your privacy and protect the confidentiality of your information. The revised confidentiality pledge utilizes language that the Census Bureau determined, after cognitive testing, would not negatively affect response rates, and hence the accuracy of the survey results.

2. The ''ADC has serious concerns on the ability of [DHS] to . . . access . . . people's personal information on the server.''

[1] Sec. 230(b)(1)(A) of the Homeland Security Act of 2002 (6 U.S.C. 151(b)(1)(A)), as added by section 223((a)(6) of the Federal Cybersecurity Enhancement Act of 2015.

[2] Section 223(b)(1)(A) (6 U.S.C. 151 note) of the Federal Cybersecurity Enhancement Act of 2015.

[3] Section 230(c)(3) of the Homeland Security Act of 2002 (6 U.S.C. 151(c)(3)), as added by section 223(a)(6) of the Federal Cybersecurity Enhancement Act of 2015.

*Response:* E3A does not provide DHS with access to a respondent's personal information. E3A does not currently decrypt respondent information or scan data at rest on Census Bureau information systems. Moreover, the Act limits the use of any information collected, stating that the DHS may use information obtained through activities authorized under this section ''only to protect information and information systems from cybersecurity risks.'' (6 U.S.C. 151(c)(3)).

EINSTEIN also provides greater protection for the Census Bureau's information and information systems than would otherwise exist. EINSTEIN enables DHS to detect cyber threat indicators traveling or transiting to or from one agency's information system, and to share those indicators with other agencies, thereby making all agencies' information systems more secure. The necessity of providing DHS limited access to such information—information which DHS can only use for cybersecurity purposes—is not only required by the Federal Cybersecurity Enhancement Act, but has a net positive impact of the security of information respondents provide to the Census Bureau.

3. The ADC is concerned that ''there is a lack of safeguards in place on who has access to information through EINSTEIN.''

*Response:* In addition to the safeguards contained in the Act, the Census Bureau works with DHS to protect information DHS may access through EINSTEIN. These additional safeguards cover the collection, retention, use, and disclosure of information. The safeguards also include notification and reporting requirements in the unlikely event that any unauthorized access, use, or dissemination of any Census Bureau information would occur.

To reiterate, the information at issue is not a respondent's personal information, rather, it is cyber threat information. E3A does not provide DHS with access to a respondent's personal information. E3A does not currently decrypt respondent information or scan data at rest on Census Bureau information systems.

4. The ADC is concerned that the revised confidentiality pledge ''raises flags on improper use of such information.''

*Response:* The Act limits DHS's use of information collected pursuant to the Act to the protection of ''information and information systems from cybersecurity risks.'' To be clear, DHS's use of the information for any other purpose would be unlawful.

5. The AAJC suggests that the protections contained in Title 13 and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA), both of which limit the use and disclosure of information collected, should control the information at issue.

*Response:* Pursuant to the Act, each agency must ''apply and continue to utilize the capabilities to all information traveling between an agency information system and any information system other than an agency information system.'' Congress authorized that, notwithstanding the protections previously afforded to information by other laws, such as Title 13, for the purpose of protecting agency information systems from cyber attacks, DHS may access information transiting and traveling to or from an agency information system. Census Bureau employees remain subject to the penalties contained in Title 13, including a federal prison sentence of up to five years and a fine of up to $250,000, or both.

6. The AAJC suggests that either the Census Bureau employees ''perform Einstein 3A functions for Census Bureau internet traffic'' or that ''DHS employees monitoring Census Bureau internet traffic under Einstein 3A take the current Title 13 confidentiality pledge.''

*Response:* The Act provides DHS access to network traffic transiting or traveling to or from the Census Bureau's information systems, notwithstanding the protections previously afforded to information by other laws, such as Title 13. The Act also requires each agency to ''apply and continue to utilize the capabilities to all information traveling between an agency information system and any information system other than an agency information system.''

In addition to the safeguards contained in the Act, the Census Bureau works with DHS to safeguard respondent information. These additional safeguards cover the collection, retention, use, and disclosure of information. The safeguards also include notification and reporting requirements that would apply in the unlikely event that any unauthorized access, use, or dissemination of any Census Bureau information would occur.

## III. Data

*Agency:* U.S. Census Bureau, Department of Commerce.

*Title:* Revision of the Confidentiality Pledge under Title 13 United States Code, Section 9.

*OMB Control Number:* 0607–0993.

*Form Number(s):* None.

*Affected Public:* All survey respondents to Census Bureau data collections.

*Legal Authority:* 44 U.S.C. 3506(e) and 13 U.S.C. Section 9.

*This information collection request may be viewed at www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

## IV. Request for Comments

Comments are invited on the necessity and efficacy of the Census Bureau's revised confidentiality pledge above. Comments submitted in response to this notice will become a matter of public record. Comments should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2017–14110 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–46–2017]**

### Foreign-Trade Zone (FTZ) 106—Oklahoma City, Oklahoma, Notification of Proposed Production Activity, Eastman Kodak Company, (Printing Flexographic Plates), Weatherford, Oklahoma

Eastman Kodak Company (Eastman Kodak) submitted a notification of proposed production activity to the FTZ Board for its facility in Weatherford, Oklahoma. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 21, 2017.

The request indicates that a separate application for subzone designation for the Eastman Kodak facility under FTZ 106 will be submitted. The facilities will be used to produce printing flexographic plates. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Eastman Kodak from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Eastman

Kodak would be able to choose the duty rate during customs entry procedures that apply to: Flexographic finished plates; aluminum finished printing plates; thermo imaging layer; direct imaging recording film sheets; and, direct imaging record film rolls (duty rates range from free to 3.7%). Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Aging inhibitor; stabilizer; photopolymerization initiator; resins for coating; ethanaminium; inhibitor; coating solvent; light stabilizer for coating; 3H-Indolium; photoinitiators; coatings for plates; aluminum finished printing plates; flexographic finished plates; mat film sheets; butadiene polymers; thermoplastic elastomers; plate manufacturing chemicals; intermediates for production of printing plates; co-polymers; monomers; propenoic acid; naphthalenesulfonic acid; urethane acrylate polymers; phonolic resin solutions; foam interleave sheets; aluminum coils of aluminum not alloyed; aluminum coils of aluminum alloys; aluminum coils of a thickness not exceeding 0.15mm: of a thickness exceeding 0.01mm; and, aluminum coils of a thickness exceeding 0.15mm but not exceeding 0.2mm (duty rates range from free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 16, 2017.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: July 3, 2017.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2017–14279 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–853]**

### Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2014–2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 7, 2017, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain crystalline silicon photovoltaic products (solar products) from Taiwan. The period of review (POR) is July 31, 2014, through January 31, 2016. Based on our analysis of the comments received, we have made certain changes to the margin calculations with respect to Sino-American Silicon Products Inc. and Solartech Energy Corp., and, therefore, the final results differ from the preliminary results. We made no changes to the preliminary results with respect to Motech Industries, Inc. The final weighted-average dumping margins are listed below in the section ''Final Results of Review.''

**DATES:** Effective July 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok or Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–3936, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 7, 2017, the Department published the *Preliminary Results* of this administrative review.[1] For the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] These final results cover 12 companies.[3] The Department conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.[4]

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted with this notice. A list of the issues which parties raised, and to which we responded in the Issues and Decision Memorandum, can be found in the Appendix to this notice. 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 *https://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 on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision

[1] *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2014–2016,* 82 FR 12802 (March 7, 2017) (*Preliminary Results*), and accompanying Memorandum, ''Decision Memorandum for the Preliminary Results of the 2014–2016 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan,'' dated February 28, 2017 (Preliminary Decision Memorandum).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2014–2016 Administrative Review of the Antidumping Duty Order on Certain Crystalline Silicon Photovoltaic Products from Taiwan,'' dated concurrently with this notice and incorporated herein by reference (Issues and Decision Memorandum).

[3] The *Preliminary Results* covered 14 companies. *See Preliminary Results,* 82 FR at 12803. Subsequently, the Department collapsed Sino-American Silicon Products Inc. (SAS) and Solartech Energy Corp. *See* Preliminary Decision Memorandum at 3–4. In these final results, the Department has determined that SAS should also be collapsed with Sunrise Global Solar Energy. *See* Issues and Decision Memorandum at Comment 3. Thus, these final results cover two mandatory respondents, and 10 companies not individually examined. *See* Final Results of Review section below, for a list of all of the companies.

[4] For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we made revisions to our preliminary calculations of the weighted-average dumping margins for Sino-American Silicon Products Inc. (SAS) and Solartech Energy Corp. (Solartech) (hereinafter, SAS-Solartech).[5] [6] For Motech Industries, Inc. (Motech), the Department made no changes to the *Preliminary Results.*

**Rate for Non-Examined Companies**

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we calculated weighted-average dumping margins for SAS-Solartech and Motech that are not zero, *de minimis,* or determined entirely on the basis of facts available. 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 compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies.[7] Accordingly, we have applied a rate of 4.10 percent to the non-selected companies, as set forth in the chart below.[8]

**Final Results of Review**

The Department determines that the following weighted-average dumping margins exist for the period July 31, 2014, through January 31, 2016:

| Manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| Sino-American Silicon Products Inc./Solartech Energy Corp | 3.56 |
| Motech Industries, Inc | 4.20 |
| AU Optronics Corporation | 4.10 |
| EEPV CORP | 4.10 |
| E-TON Solar Tech. Co., Ltd | 4.10 |
| Gintech Energy Corporation | 4.10 |
| Inventec Energy Corporation | 4.10 |
| Inventec Solar Energy Corporation | 4.10 |
| Kyocera Mexicana S.A. de C.V | 4.10 |
| Sunengine Corporation Ltd | 4.10 |
| TSEC Corporation | 4.10 |
| Win Win Precision Technology Co., Ltd | 4.10 |

**Disclosure**

The Department intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

**Assessment**

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this administrative review in the **Federal Register**.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[9] Where the Department calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[10] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[11] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[12]

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section, above.

Consistent with the Department's assessment practice, for entries of subject merchandise during the POR produced by SAS-Solartech, Motech, or the non-examined companies for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[13]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed in these final results will be equal to the weighted-average dumping margins established in the

[5] *See* Issues and Decision Memorandum at comments 4, 7, 10 and 11.

[6] *See* Memorandum to The File Through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, From Magd Zalok, AD/CVD Operations, Office 4: 2014–2016 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan, Final Results Analysis for the SAS-Solartech Entity (Analysis Memorandum for the Final Results), dated concurrently with this notice.

[7] *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).

[8] *See* Memorandum from Thomas Martin to the File, ''Calculation of the Rate for Non-Selected Respondents,'' dated dated concurrently with this notice.

[9] *See* 19 CFR 351.212(b)(1).

[10] *Id.*

[11] *Id.*

[12] *See* 19 CFR 351.106(c)(2).

[13] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.50 percent,[14] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties Regarding Administrative Protective Order**

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

[14] *See Certain Crystalline Silicon Photovoltaic Products: Final Determination of Sales at Less Than Fair Value,* 79 FR 76966 (December 23, 2014).

Dated: June 29, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. List of Issues
A. SAS-Solartech-Specific Issues
Comment 1: Whether Products Shipped to the United States are Third-Country Sales
Comment 2: Whether To Exclude Priced Sample Sales
Comment 3: Whether To Assign SAS-Solartech's Rate to Sunrise Global Solar Energy
Comment 4: Whether To Revise the MFRH/U Fields To Reflect the Collapsed Entity
Comment 5: Whether To Revise the Draft Cash Deposit and Assessment Instructions
Comment 6: Differential Pricing
Comment 7: Cost of Manufacturing for Grade 4 Non-Prime Products
Comment 8: Scrap Offset for Two Resold CONNUMs
Comment 9: Year-End Adjustment for Items Relating to Profit
Comment 10: Loss in Inventory Devaluation
Comment 11: Other CPA Adjustment
Comment 12: Scrap Offset
Comment 13: Rental Expenses
Comment 14: Fixed Overhead Costs
Comment 15: G&A and Financial Expenses
B. Motech-Specific Issues
Comment 16: Whether To Apply Partial AFA to Motech's Reported Per-Unit Costs
Comment 17: Whether To Deny Motech's Offset for Silver Paste Scrap
Comment 18: Whether To Include Fire Losses in Motech's General and Administrative (''G&A'') Expenses
Comment 19: Whether To Exclude Motech's Reported ''Indirect'' U.S. Sales for One Customer
III. Background
IV. Scope of the Order
V. Margin Calculations
VI. Discussion of the Issues
VII. Recommendation

[FR Doc. 2017–14281 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–863]**

### Honey From the People's Republic of China: Preliminary Rescission of the New Shipper Review and Preliminary Results of the Administrative Review; 2015–2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) aligned the 2015–2016 new shipper review of the antidumping duty order on honey from the People's Republic of China (PRC) with the 2015–2016 administrative review of the same order covering the same period of review (POR), and is therefore conducting the reviews concurrently. The POR for the administrative review and the new shipper review is December 1, 2015, through November 30, 2016. As discussed below, the Department is preliminarily rescinding the new shipper with respect to Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd. (Jiangsu Runchen) and has preliminarily found that Shanghai Sunbeauty Trading Co., Ltd. (Sunbeauty) is not eligible to receive a separate rate.

**DATES:** Effective July 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Carrie Bethea, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1491.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 1, 2016, the Department published a notice of opportunity to request an AR of the antidumping duty order on honey from the PRC for the POR.[1] On December 28, 2016, Sunbeauty requested that the Department conduct an administrative review of the sales of subject merchandise exported by Sunbeauty during the POR.[2] On January 3, 2017, the American Honey Producers Association and Sioux Honey Producers Association (collectively, the petitioners) requested that the Department conduct an administrative review.[3] On February 13, 2017, based on the timely requests for administrative review, the Department initiated an administrative review of two exporters/producers, Shayang Xianghe and Sunbeauty.[4] On February 28, 2017, the

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 86694 (December 1, 2016).

[2] *See* Letter to the Secretary from Sunbeauty re: Request for Administrative Review; 2015–2016, dated December 28, 2016.

[3] *See* Letter to the Secretary from Petitioners re: Request for Administrative Review; 2015–2016, dated January 3, 2017.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 10457, 10460 (February 13, 2017) (*AR Initiation Notice*); *see also* Letter to the Secretary from Petitioners re: Petitioners' Withdrawal of Request for Administrative Review of Jiangsu Runchen

Continued

petitioners withdrew their request for Shayang Xianghe.[5] As a result, the Department rescinded the review with respect to Shayang Xianghe.[6]

On February 3, 2017, in response to a request from Jiangsu Runchen, the Department published notice of initiation of a new shipper review of honey for the period December 1, 2015, to November 30, 2016.[7] On February 15, 2017, the Department aligned the new shipper review of honey from the PRC with the concurrent administrative review of honey from the PRC.[8]

The Department sent the new shipper review antidumping duty questionnaire to Jiangsu Runchen on February 3, 2017.[9] The Department issued the administrative review antidumping duty questionnaire to Sunbeauty on February 13, 2017.[10]

## Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Also, included in the scope are blends of honey and rice syrup, regardless of the percentage of honey contained in the blend.

Scope Rulings made between July 1, 2012, and September 30, 2012; Requestor: The American Honey Producers Association and the Sioux Honey Association; blends of honey and rice syrup, regardless of the percentage of honey they contain, are later-developed merchandise that are within the scope of the antidumping duty order; August 21, 2012.

## Methodology

The Department is conducting these reviews in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), 771(i)(1) of the Act, and 19 CFR 351.213 and 351.214. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Department's Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

## Preliminary Rescission of New Shipper Review

For the reasons detailed in the Preliminary Decision Memorandum, the Department preliminarily finds that we cannot determine whether Jiangsu Runchen made *bona fide* sale(s) to the United States. Consequently, the Department is preliminarily rescinding the new shipper review of Jiangsu Runchen for the period December 1, 2015, through November 30, 2016.

## Preliminary Results of Administrative Review

In making our findings, because Sunbeauty was unable to provide evidence of a suspended entry of subject merchandise into the United States during the POR and is, thus, ineligible to receive a separate rate, we are preliminarily treating Sunbeauty as part of the PRC-wide entity. For a full description of the methodology underlying our preliminary conclusions, see the Preliminary Decision Memorandum.

We preliminarily determine that the following antidumping duty margin exists:

| Manufacturer/exporter | Margin (dollars per kilogram) |
|---|---|
| PRC-wide entity (including Shanghai Sunbeauty Trading Co., Ltd.) | 2.63 |

## Public Comment

Interested parties may submit written comments by no later than 30 days after the date of publication of this preliminary rescission of the new shipper review and these preliminary results of the administrative review.[11] Rebuttals, limited to issues raised in the written comments, may be filed by no later than five days after the written comments are due.[12]

Any interested party may request a hearing within 30 days of publication of this notice.[13] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[14]

The Department intends to issue the final results of these reviews, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

## Assessment Rates

Upon completion of the final results of this new shipper review, pursuant to 19 CFR 351.212(b), the Department will determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If we proceed to a final rescission of the new shipper review, Jiangsu Runchen's entries will be assessed at the rate entered.[15] If we do not proceed to a final rescission of the new shipper review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered

Agricultural/Sideline Foodstuff Co., Ltd., dated January 26, 2017.

[5] *See* Letter to the Secretary from Petitioners, re: Petitioners' Withdrawal of Request for 2015/2016 Administrative Review, in Part, dated February 28, 2017.

[6] *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 14503 (March 21, 2017).

[7] *See Honey from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2015–2016,* 82 FR 9192 (February 3, 2017) (*NSR Initiation Notice*); *see also* Letter to the Secretary from Jiangsu Runchen re: Request for New-Shipper Review, dated December 23, 2017.

[8] *See* Memorandum regarding: Alignment of the New Shipper Review of Jiangsu Runchen, dated February 15, 2017.

[9] *See* Department Letter re: Antidumping Duty New Shipper Review Questionnaire, dated February 3, 2017.

[10] *See* Department Letter re: Antidumping Duty Administrative Review Questionnaire, dated February 13, 2017.

[11] *See* 19 CFR 351.309(c).

[12] *See* 19 CFR 351.309(d).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(d).

[15] *See* 19 CFR 351.106(c)(2).

by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.[16] The Department intends to issue assessment instructions to CBP 15 days after the publication of the final results of this new shipper review.

Upon issuance of the final results of this administrative review, the Department will determine, and CBP shall assess antidumping duties on all appropriate entries. We will instruct CBP to liquidate entries containing merchandise from the PRC-wide entity at the PRC-wide rate we determine in the final results of the review. If we do not continue to treat Sunbeauty as part of the PRC-wide entity, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.[17] The Department intends to issue assessment instructions to CBP 15 days after the publication of the final results or rescission of this new shipper review and the final results of this administrative review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of $2.63 per kilogram; and, (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) in this administrative review of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. 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 violation which is subject to sanction.

The Department is issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(l) of the Act, and 19 CFR 351.214 and 19 CFR 351.221(b)(4).

Dated: June 29, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–14277 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[16] *Id.*

[17] *Id.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–809]**

## Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation: Final Results of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 5, 2017, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel products from the Russian Federation (Russia). The review covers one producer/exporter of the subject merchandise, Severstal PAO and Severstal Export (collectively, Severstal). The period of review (POR) is December 19, 2014, through November 30, 2015. After our analysis of the comments and information received, these final results do not change from the preliminary results of review. For the final weighted-average dumping margins, *see* the ''Final Results of Review'' section below.

**DATES:** Effective July 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** John Drury or Madeline Heeren, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5041 or (202) 482–0195, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 5, 2017, the Department published the *Preliminary Results*.[1] A summary of the events that occurred since the Department published these results, as well as a full discussion of the issues raised by parties for these final results, may be found in the Issues and Decision Memorandum, which is hereby adopted by this notice.[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 *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In

[1] The *Initiation Notice* and *Preliminary Results* inadvertently referenced the incorrect order title. This **Federal Register** notice and the decision memorandum accompanying these final results use the original and correct order title, as reflected in the 2014 order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832 (February 9, 2016) (*Initiation Notice*); *see also Certain Hot-Rolled Carbon Steel Flat Products from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 1318 (January 5, 2017) (*Preliminary Results*)*; see also, Termination of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation, Rescission of 2013–2014 Administrative Review, and Issuance of Antidumping Duty Order,* 79 FR 77455 (December 24, 2014) (*AD Order*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; 2014–2015,'' dated concurrently with this notice (Issues and Decision Memorandum).

addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

**Scope of the Order**

The product covered by this order is certain hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Russia. The full text of the scope of the order is contained in the Issues and Decision Memorandum.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues raised by parties is attached in the Appendix to this notice.

**Adverse Facts Available**

In the *Preliminary Results,* the Department applied total adverse facts available (AFA) to Severstal and assigned it a rate of 184.56 percent. The Department determined that Severstal significantly impeded the proceeding, failed to provide necessary information, and failed to cooperate by not acting to the best of its ability to comply with requests for information. As discussed in the Issues and Decision Memorandum, we continue to assign Severstal an AFA rate for these final results of review.

**Final Results of the Review**

The final weighted-average dumping margin is as follows:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Severstal PAO and Severstal Export (collectively, Severstal) | 184.56 |

**Assessment Rate**

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[3] The Department shall instruct CBP to apply an *ad valorem* assessment rate of 184.56 percent to all entries of subject merchandise during the POR which were produced and/or exported by Severstal. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the respondent noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 184.56 percent, the all-others rate established in the antidumping duty investigation.[4] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers Regarding the Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties did occur and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: June 30, 2017.

**Ronald K. Lorentzen**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Final Issues and Decision Memorandum**

I. Summary
II. List of Issues
III. Background
IV. Scope of the Order
V. Discussion of the Issues
1. Application of Total Adverse Facts Available
2. Rejection of Severstal's April 14, 2016, Extension Request
3. Issuance of a U.S. Customer Questionnaire
4. Release of Business Proprietary Information
5. Selection of AFA Rate
VI. Recommendation

[FR Doc. 2017–14278 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[3] For assessment purposes, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[4] *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 64 FR 38626 (July 19, 1999).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF502**

### Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of SEDAR Data Best Practices Standing Panel webinar.

**SUMMARY:** The SEDAR Data Best Practices Panel will develop, review, and evaluate best practice recommendations for SEDAR Data Workshops. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR Data Best Practices Standing Panel webinar will be held on

Thursday, July 27, 2017, from 2 p.m. to 4 p.m. (EST).

**ADDRESSES:** The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405. *www.sedarweb.org.*

**FOR FURTHER INFORMATION CONTACT:** Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email*: julia.byrd@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing a workshop and/or webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The SEDAR Data Best Practices Standing Panel is charged with developing, reviewing, and evaluating best practice recommendations for SEDAR Data Workshops. The items of discussion for this webinar are as follows:

1. Discuss prioritization criteria to select next issues for Panel to address
2. Identify preferred management history template
3. Update on Data Best Practice feedback received to date
4. Prioritize Data Best Practice issues to address next and discuss process that will be used to address these issues
5. Other business

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–14264 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF521**

### Mid-Atlantic Fishery Management Council (MAFMC); Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Bluefish Monitoring Committee will hold a public meeting.

**DATES:** The meeting will be held on Monday, July 24, 2017, from 10 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held via webinar with a telephone-only connection option. Details on the proposed agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's Web site: *www.mafmc.org.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is for the Monitoring Committee to review, and if necessary, revise the current management measures designed to achieve the recommended Atlantic Bluefish catch and landings limits for 2018.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–14267 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF286**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys off the Coast of New Jersey

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of an Incidental Harassment Authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Ocean Wind, LLC (Ocean Wind), to incidentally harass, by Level B harassment only, marine mammals during high-resolution geophysical (HRG) and geotechnical survey investigations associated with marine site characterization activities off the coast of New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0498) (Lease Area).

**DATES:** This Authorization is effective from June 8, 2017, through June 7, 2018.

**FOR FURTHER INFORMATION CONTACT:** Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

#### National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

#### Summary of Request

NMFS received a request from Ocean Wind for an IHA to take marine mammals incidental to 2017 geophysical survey investigations off the coast of New Jersey in the OCS–A 0498 Lease Area, designated and offered by the U.S. Bureau of Ocean Energy Management (BOEM), to support the development of an offshore wind project. Ocean Wind's request was for harassment only, and NMFS concurs that mortality is not expected to result from this activity; therefore, an IHA is appropriate.

The planned geophysical survey activities will occur for 42 days beginning in early June 2017, and geotechnical survey activities will take place in September 2017 and last for approximately 12 days. The following specific aspects of the planned activities are likely to result in the take of marine mammals: shallow and medium-penetration sub-bottom profilers (chirper and sparker) used during the HRG survey, and dynamically-positioned (DP) vessel thruster used in support of geotechnical survey activities. Take, by Level B Harassment only, of individuals of five species of marine mammals is anticipated to result from the specified activities. No serious injury or mortality is expected from Ocean Wind's HRG and geotechnical surveys.

#### Description of the Specified Activity

*Overview*

Ocean Wind plans to conduct a geophysical and geotechnical survey off the coast of New Jersey in the Lease Area to support the characterization of the existing seabed and subsurface geological conditions in the Lease Area. This information is necessary to support the siting, design, and deployment of up to two meteorological data collection buoys called floating light and detection ranging buoys (FLIDARs) and up to two metocean and current buoys, as well as to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area to support the siting of the wind farm. Surveys will include the use of the following equipment: multi-beam depth sounder, side-scan sonar, sub-bottom profiler, and cone penetration tests (CPTs). A detailed description of the planned marine site characterization project was provided in the **Federal Register** notice for the proposed IHA (82 FR 20563; May 3, 2017). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

*Dates and Duration*

HRG surveys are anticipated to commence in early June 2017 and will last for approximately 42 days, including estimated weather down time. Geotechnical surveys requiring the use of the DP drill ship will take place in September 2017, at the earliest, and will last for approximately 12 days excluding weather downtime. Equipment is expected run continuously for 24 hours per day.

*Specified Geographic Region*

Ocean Wind's survey activities will occur in the approximately 160,480-acre Lease Area designated and offered by the BOEM, located approximately nine miles (mi) southeast of Atlantic City, New Jersey, at its closest point (see Figure 1 of the IHA application). The

Lease Area falls within the New Jersey Wind Energy Area (NJ WEA; Figure 1–1 of the IHA application) with water depths ranging from 15–40 meters (m) (49–131 feet (ft)).

*Detailed Description of Specific Activities*

HRG Survey Activities

Marine site characterization surveys will include the following HRG survey activities:

- Depth sounding (multibeam depth sounder) to determine water depths and general bottom topography;
- Magnetic intensity measurements for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom;
- Seafloor imaging (sidescan sonar survey) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features;
- Shallow penetration sub-bottom profiler (chirper) to map the near surface stratigraphy (top 0–5 meter (m) soils below seabed); and
- Medium penetration sub-bottom profiler (sparker) to map deeper subsurface stratigraphy as needed (soils down to 75–100 m below seabed).

Table 1 identifies the representative survey equipment that is being considered in support of the HRG survey activities. The make and model of the listed HRG equipment will vary depending on availability but will be finalized as part of the survey preparations and contract negotiations with the survey contractor. The final selection of the survey equipment will be confirmed prior to the start of the HRG survey program. Only the make and model of the HRG equipment may change, not the types of equipment or the addition of equipment with characteristics that might have effects beyond (*i.e.,* resulting in larger ensonified areas) those considered in this proposed IHA. None of the proposed HRG survey activities will result in the disturbance of bottom habitat in the Lease Area.

TABLE 1—SUMMARY OF PROPOSED HRG SURVEY EQUIPMENT

| HRG equipment | Operating frequencies | Source level (manufacturer) ($dB_{peak}$; $dB_{rms}$) | Source level (bay state wind survey) * ($dB_{peak}$; $dB_{rms}$) | Beamwidth (degree) | Pulse duration (millisec) |
|---|---|---|---|---|---|
| Sonardyne Ranger 2 USBL | 35–50 kHz | 200 $dB_{Peak}$; n/a | 194 $dB_{Peak}$; 166.10 $dB_{rms}$. | 180 | 1. |
| Klein 3000H Sidescan Sonar | 445/900 kHz | 245 $dB_{Peak}$; 242 $dB_{rms}$. | n/a; n/a | 0.2 | 0.0025 to 0.4. |
| GeoPulse Sub-bottom Profiler (chirper) | 1.5 to 18 kHz | 223.5 $dB_{Peak}$; 208 $dB_{rms}$. | 203 $dB_{Peak}$; 172.45 $dB_{rms}$. | 55 | 0.1 to 22. |
| Geo-Source 600/800 (sparker) | 50 to 5000 Hz | 222/223 $dB_{Peak}$; 221/223 $dB_{rms}$. | 206/212 $dB_{Peak}$; 182.10/188.15 $dB_{rms}$. | 110 | 1 to 10. |
| SeaBat 7125 Multibeam Sonar | 200/400 kHz | 220 $dB_{Peak}$; 213 $dB_{rms}$. | n/a; n/a | 2 | 0.03 to 0.3. |

* Gardline 2016, 2017.

The HRG survey activities will be supported by a vessel approximately 98 to 180 feet (ft) in length and capable of maintaining course and a survey speed of approximately 4.5 knots while transiting survey lines. HRG survey activities across the Lease Area will generally be conducted at 900-meter (m) line spacing. Up to two FLIDARs and two wave buoys will be deployed within the Lease Area, and up to three potential locations for FLIDAR deployment will be investigated. At each FLIDAR and wave buoy deployment locations, the survey will be conducted along a tighter 30-m line spacing to meet the BOEM requirements as set out in the July 2015 Guidelines for Providing Geophysical, Geotechnical, and Geohazard Information Pursuant and Archeological and Historic Property Information in 30 CFR part 585.

The equipment positioning systems use vessel-based underwater acoustic positioning to track equipment (in this case, the sub-bottom profiler) in very shallow to very deep water. Equipment positioning systems will be operational at all times during HRG survey data acquisition (*i.e,* concurrent with the sub-bottom profiler operation). Sub-bottom profiling systems identify and measure various marine sediment layers that exist below the sediment/water interface. A sound source emits an acoustic signal vertically downwards into the water and a receiver monitors the return signal that has been reflected off the sea floor. Some of the acoustic signal will penetrate the seabed and be reflected when it encounters a boundary between two layers that have different acoustic impedance. The system uses this reflected energy to provide information on sediment layers beneath the sediment-water interface. A shallow penetration sub-bottom profiler will be used to map the near surface stratigraphy of the Lease Area. A Geo-Source 200/800, or similar model, medium-penetration sub-bottom profiler (sparker) will be used to map deeper subsurface stratigraphy in the Lease Area as needed (soils down to 75–100 m below seabed). The sparker is towed from a boom arm off the side of the survey vessel and emits a downward pulse with a duration of 1 to 10 millisecond (ms) at an operating frequency of 50 to 5000 Hertz (Hz).

Geotechnical Survey Activities

Marine site characterization surveys will involve the following geotechnical survey activities:

- Sample boreholes to determine geological and geotechnical characteristics of sediments;
- Deep CPTs to determine stratigraphy and in-situ conditions of the deep surface sediments; and
- Shallow CPTs to determine stratigraphy and in-situ conditions of the near surface sediments.

It is anticipated that the geotechnical surveys will take place no sooner than September 2017. The geotechnical survey program will consist of up to 8 deep sample bore holes and adjacent 8 deep CPTs both to a depth of approximately 130 ft to 200 ft (40 m to 60 m) below the seabed, as well as 30 shallow CPTs, up to 130 ft (40 m) below seabed.

The investigation activities are anticipated to be conducted from a 250-ft to 350-ft (76 m to 107 m) DP drill ship. DP vessel thruster systems maintain their precise coordinates in waters with automatic controls. These control systems use variable levels of power to counter forces from current and wind.

Operations will take place over a 24-hour period to ensure cost, the duration of survey activities, and the period of potential impact on marine species are minimized. Based on 24-hour operations, the estimated duration of the geotechnical survey activities will be approximately 12 days excluding weather downtime. Estimated weather downtime is approximately 10 days.

Please see the previously referenced **Federal Register** notice (82 FR 20563; May 3, 2017) for a more detailed description of the specified activity.

**Comments and Responses**

A notice of NMFS' proposal to issue an IHA to Ocean Wind was published in the **Federal Register** on May 3, 2017 (82 FR 20563). That notice described, in detail, Ocean Wind's activity, the marine mammal species that may be affected by the activity and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and the Center for Regulatory Effectiveness (CRE).

*Comment 1:* The Commission recommends that, until the behavior thresholds are updated, NMFS require applicants to use the 120- rather than 160-dB re 1 µPa threshold for acoustic, non-impulsive sources (*e.g.,* chirp-type sub-bottom profilers, echosounders, and other sonars including side-scan and fish-finding).

*Response:* NMFS considers sub-bottom profilers to be impulsive sources; therefore, 160 dB threshold will continue to be used. Additionally, BOEM listed sparkers as impulsive sources (BOEM 2016). The 120-dB threshold is typically associated with continuous sources. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005). Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Sub-bottom profiler signals are intermittent sounds. Intermittent sounds can further be defined as either impulsive or non-impulsive. Impulsive sounds have been defined as sounds which are typically transient, brief (<1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). Non-impulsive sounds typically have more gradual rise times and longer decays (ANSI, 1995; NIOSH, 1998). Sub-bottom profiler signals have durations that are typically very brief (<1 sec), with temporal characteristics that more closely resemble those of impulsive sounds than non-impulsive sounds. With regard to behavioral thresholds, we consider the temporal and spectral characteristics of sub-bottom profiler signals to more closely resemble those of an impulse sound rather than a continuous sound. The 160-dB threshold is typically associated with impulsive sources. Therefore, the 160-dB threshold (typically associated with impulsive sources) is more appropriate than the 120-dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources.

*Comment 2:* The Commission recommends that NMFS work with the BOEM Office of Renewable Energy to determine the circumstances under which adoption of mutually agreed-upon mitigation measures would avoid the potential for taking marine mammals and the need for an IHA. The Commission further recommends that NMFS use a consistent approach for reducing (or not reducing) the numbers of estimated takes based on the requirement to implement mitigation measures to preclude taking in the respective Level B harassment zones.

*Response:* NMFS appreciates the Commission's recommendations to streamline our incidental take authorization (ITA) process. NMFS believes that for this project with activities occurring at night and over a long duration, we are not comfortable assuming we can avoid all takes with mitigation measures in place. Ocean Wind's application included conservative monitoring measures, which will help reduce take of marine mammals, but may not completely eliminate the possibility for take.

In regards to the Commission's recommendation for using a consistent approach to reducing the number of estimated take, they referenced our ITAs involving Cook Inlet beluga whales. First, Ocean Wind's project is not the same situation as in Cook Inlet. In Cook Inlet there is a small resident population of beluga whales, and applicants have proposed shutting down when a certain number of total belugas observed within the Level B zone is reached to help ensure that no more than small numbers (an MMPA requirement) of belugas are taken during their activity. Second, regarding consistency, NMFS generally applies standard minimum mitigation requirements to different activity types. However, if an applicant proposes measures that are more protective than the standard minimum in their application (and NMFS believes that those measures will effect a reduction of impacts beyond the standard minimum measures), it suggests that those measures are practicable for the applicant may be appropriate for NMFS to include them to meet our least practicable adverse impact standard. Though standard minimum measures are helpful and generally used, the overall suite of mitigation measures is determined on a case-by-case basis, is dependent upon multiple factors specific to the activity, environment, and affected species, and may vary some between projects.

*Comment 3:* CRE does not oppose NMFS' issuance of the IHA, but they do oppose NMFS' use of the acoustic Guidance in the IHA. Given the Executive Order (EO) 13795, CRE commented that NMFS does not have the authority to use the Guidance until the Commerce Secretary has completed his review and made a decision as to whether to revise or rescind the Guidance. They further recommend that NMFS remove any claim that OMB had approved an Information Collection Request (ICR) for the Guidance, and NMFS should correct information disseminations that suggest or require that the Guidance may be used for any regulatory purpose.

*Response:* As described in our May 31, 2017 **Federal Register** notice (82 FR 24950), NMFS is soliciting public comment on the Guidance in accordance with EO 13795. NMFS will also consult the appropriate Federal agencies to assist the Secretary of Commerce in reviewing the Technical Guidance for consistency with the policy in section 2 of EO 13795. As mandated by the EO, at the conclusion of the review the Secretary of Commerce will make a determination of how to proceed. At that point, NMFS will determine what information will be provided on our information disseminations. EO 13795 does not state that the Guidance cannot be used during the review process; therefore, the Guidance remains applicable during this time. The Guidance explicitly states that ITA applicants are not required to use it and that, if an alternative approach is likely to produce a more accurate estimate of auditory impact for the project being evaluated, the applicant may propose such an alternate approach (NMFS 2016).NMFS is currently in compliance under the Paperwork Reduction Act (PRA) for the ICR.

**Description of Marine Mammals in the Area of the Specified Activity**

There are 35 species of marine mammals that potentially occur in the Northwest Atlantic OCS region (BOEM 2014) (Table 2). The majority of these

species are pelagic and/or northern species, or are so rarely sighted that their presence in the Lease Area is unlikely. Five species are considered to have the potential to co-occur with the planned survey activities: fin whale (*Balaenoptera physalus*), bottlenose dolphin (*Tursiops truncatus*), short-beaked common dolphin (*Delphinus delphis*), harbor porpoise (*Phocoena phocoena*), and harbor seal (*Phoca vitulina*) (Right Whale Consortium 2016). Table 2 lists all species with expected potential for occurrence in the NE Atlantic OCS and summarizes information related to the population or stock. For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA. All managed stocks in this region are assessed in NMFS's U.S. 2016 Atlantic SARs and can be found here: *http://www.nmfs.noaa.gov/pr/species/*. All values presented in Table 2 are the most recent available at the time of publication and are available in the draft 2016 SARs. A detailed description of the of the species likely to be affected by the marine site characterization project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 20563; May 3, 2017). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals/*) for generalized species accounts.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OFF THE NORTHWEST ATLANTIC OCS

| Common name | Stock | NMFS MMPA and ESA status; strategic (Y/N) [1] | Stock Abundance (CV,Nmin, most recent abundance survey) [2] | PBR [3] | Occurrence and seasonality in the NW Atlantic OCS |
|---|---|---|---|---|---|
| **Toothed whale (Odontoceti)** | | | | | |
| Atlantic white-sided dolphin (*Lagenorhynchus acutus*). | W. North Atlantic ..... | -; N | 48,819 (0.61; 30,403; n/a). | 304 | rare. |
| Atlantic spotted dolphin (*Stenella frontalis*). | W. North Atlantic ..... | -; N | 44,715 (0.43; 31,610; n/a). | 316 | rare. |
| Bottlenose dolphin (*Tursiops truncatus*). | W. North Atlantic, Offshore. | -; N | 77,532 (0.40; 56,053; 2011). | 561 | Common year round. |
| Clymene Dolphin (*Stenella clymene*) | W. North Atlantic ..... | -; N | Unknown (unk; unk; n/a) | Undet | rare. |
| Pantropical Spotted Dolphin (*Stenella attenuata*). | W. North Atlantic ..... | -; N | 3,333 (0.91; 1,733; n/a) | 17 | rare. |
| Risso's dolphin (*Grampus griseus*) ... | W. North Atlantic ..... | -; N | 18,250 (0.46; 12,619; n/a). | 126 | rare. |
| Short-beaked common dolphin (*Delphinus delphis*). | W. North Atlantic ..... | -; N | 70,184 (0.28; 55,690; 2011). | 557 | Common year round. |
| Striped dolphin (*Stenella coeruleoalba*). | W. North Atlantic ..... | -; N | 54,807 (0.3; 42,804; n/a). | 428 | rare. |
| Spinner Dolphin (*Stenella longirostris*). | W. North Atlantic ..... | -; N | Unknown (unk; unk; n/a) | Undet | rare. |
| White-beaked dolphin (*Lagenorhynchus albirostris*). | W. North Atlantic ..... | -; N | 2,003 (0.94; 1,023; n/a) | 10 | rare. |
| Harbor porpoise (*Phocoena phocoena*). | Gulf of Maine/Bay of Fundy. | -; N | 79,833 (0.32; 61,415; 2011). | 706 | Common year round. |
| Killer whale (*Orcinus orca*) ..... | W. North Atlantic ..... | -; N | Unknown (unk; unk; n/a) | Undet | rare. |
| False killer whale (*Pseudorca crassidens*). | W. North Atlantic ..... | -;Y | 442 (1.06; 212; n/a) ..... | 2.1 | rare. |
| Long-finned pilot whale (*Globicephala melas*). | W. North Atlantic ..... | -;Y | 5,636 (0.63; 3,464; n/a) | 35 | rare. |
| Short-finned pilot whale (*Globicephala macrorhynchus*). | W. North Atlantic ..... | -;Y | 21,515 (0.37; 15,913; n/a). | 159 | rare. |
| Sperm whale (*Physeter macrocephalus*). | North Atlantic ..... | E; Y | 2,288 (0.28; 1,815; n/a) | 3.6 | Year round in continental shelf and slope waters, occur seasonally to forage. |
| Pygmy sperm whale (*Kogia breviceps*). | W. North Atlantic ..... | -; N | 3,785 [b/](0.47; 2,598; n/a). | 26 | rare. |
| Dwarf sperm whale (*Kogia sima*) ..... | W. North Atlantic ..... | -; N | 3,785 [b/](0.47; 2,598; n/a). | 26 | rare. |
| Cuvier's beaked whale (*Ziphius cavirostris*). | W. North Atlantic ..... | -; N | 6,532 (0.32; 5,021; n/a) | 50 | rare. |
| Blainville's beaked whale (*Mesoplodon densirostris*). | W. North Atlantic ..... | -; N | 7,092 [c/](0.54; 4,632; n/a). | 46 | rare. |
| Gervais' beaked whale (*Mesoplodon europaeus*). | W. North Atlantic ..... | -; N | 7,092 [c/](0.54; 4,632; n/a). | 46 | rare. |
| True's beaked whale (*Mesoplodon mirus*). | W. North Atlantic ..... | -; N | 7,092 [c/](0.54; 4,632; n/a). | 46 | rare. |
| Sowerby's Beaked Whale (*Mesoplodon bidens*). | W. North Atlantic ..... | -; N | 7,092 [c/](0.54; 4,632; n/a). | 46 | rare. |

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OFF THE NORTHWEST ATLANTIC OCS—Continued

| Common name | Stock | NMFS MMPA and ESA status; strategic (Y/N) [1] | Stock Abundance (CV,Nmin, most recent abundance survey) [2] | PBR [3] | Occurrence and seasonality in the NW Atlantic OCS |
|---|---|---|---|---|---|
| Melon-headed whale (*Peponocephala electra*). | W. North Atlantic ..... | -; N | Unknown (unk; unk; n/a) | Undet | rare. |
| **Baleen whales (Mysticeti)** | | | | | |
| Minke whale (*Balaenoptera acutorostrata*). | Canadian East Coast .... | -; N | 2,591 (0.81; 1,425; n/a) | 162 | Year round in continental shelf and slope waters, occur seasonally to forage. |
| Blue whale (*Balaenoptera musculus*) | W. North Atlantic ..... | E; Y | Unknown (unk; 440; n/a) | 0.9 | Year round in continental shelf and slope waters, occur seasonally to forage. |
| Fin whale (*Balaenoptera physalus*) ... | W. North Atlantic ..... | E; Y | 1,618 (0.33; 1,234; n/a) | 2.5 | Year round in continental shelf and slope waters, occur seasonally to forage. |
| Humpback whale (*Megaptera novaeangliae*). | Gulf of Maine ..... | -; N | 823 (0; 823; n/a) ..... | 2.7 | Common year round. |
| North Atlantic right whale (*Eubalaena glacialis*). | W. North Atlantic ..... | E; Y | 440 (0; 440; n/a) ..... | 1 | Year round in continental shelf and slope waters, occur seasonally to forage. |
| Sei whale (*Balaenoptera borealis*) .... | Nova Scotia ..... | E; Y | 357 (0.52; 236; n/a) ..... | 0.5 | Year round in continental shelf and slope waters, occur seasonally to forage. |
| **Earless seals (Phocidae)** | | | | | |
| Gray seals (*Halichoerus grypus*) ..... | North Atlantic ..... | -; N | 505,000 (unk; unk; n/a) | Undet | Unlikely. |
| Harbor seals (*Phoca vitulina*) ..... | W. North Atlantic ..... | -; N | 75,834 (0.15; 66,884; 2012). | 2,006 | Common year round. |
| Hooded seals (*Cystophora cristata*) .. | W. North Atlantic ..... | -; N | Unknown (unk; unk; n/a) | Undet | rare. |
| Harp seal (*Phoca groenlandica*) ..... | North Atlantic ..... | -; N | Unknown (unk; unk; n/a) | Undet | rare. |

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the draft 2016 Pacific SARs.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

## Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

The effects of underwater noise from HRG and geotechnical activities for the marine site characterization project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (82 FR 20563; May 3, 2017) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here. Please refer to the **Federal Register** notice (82 FR 20563; May 3, 2017) for that information.

## Estimated Take

This section provides an estimate of the number of incidental takes authorized in this IHA, which informed both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG and geotechnical surveys. Based on the nature of the activity, the short duration of activities, and the small Level A isopleths (less than 3 m for all sources), Level A harassment is neither anticipated nor authorized. The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated for this project.

Project activities that have the potential to harass marine mammals, as defined by the MMPA, include underwater noise from operation of the HRG survey sub-bottom profilers and noise propagation associated with the use of DP thrusters during geotechnical survey activities that require the use of a DP drill ship. NMFS anticipates that impacts to marine mammals will be in the form of behavioral harassment, and no take by injury, serious injury, or mortality is authorized.

The basis for the take estimate is the number of marine mammals that will be exposed to sound levels in excess of NMFS' Level B harassment criteria for impulsive noise (160 dB re 1 µPa (rms) and continuous noise (120 dB re 1 µPa (rms)), which is generally determined by overlaying the area ensonified above NMFS acoustic thresholds for harassment within a day with the density of marine mammals, and multiplying by the number of days. NMFS' current acoustic thresholds for estimating take are shown in Table 3 below.

TABLE 3—NMFS'S ACOUSTIC EXPOSURE CRITERIA

| Criterion | Definition | Threshold |
|---|---|---|
| Level B harassment (underwater) | Behavioral disruption | 160 dB (impulsive source)/120 dB (continuous source) (rms). |
| Level B harassment (airborne) | Behavioral disruption | 90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted). |

Modeling took into consideration sound sources using the potential operational parameters, bathymetry, geoacoustic properties of the Lease Area, time of year, and marine mammal hearing ranges. Results from the hydroacoustic modeling and measurements showed that estimated maximum distance to the 160 dB re 1 µPa (rms) MMPA threshold for all water depths for the HRG survey sub-bottom profilers (the HRG survey equipment with the greatest potential for effect on marine mammal) was approximately 75.28 m from the source using practical spreading (Subacoustech 2016), and the estimated maximum critical distance to the 120 dB re 1 µPa (rms) MMPA threshold for all water depths for the drill ship DP thruster was approximately 500 m from the source (Subacoustech 2016). Ocean Wind and NMFS believe that these estimates represent the a conservative scenario and that the actual distances to the Level B harassment threshold may be shorter for HRG equipment, as practical spreading (15logR) was used to estimate the ensonified area here and there are some sound measurements taken in the Northeast that suggest a higher spreading coefficient (which would result in a shorter distance) may be applicable.

Ocean Wind estimated species densities within the project area in order to estimate the number of marine mammal exposures to sound levels above the 120 dB Level B harassment threshold for continuous noise (*i.e.,* DP thrusters) and the 160 dB Level B harassment threshold for intermittent, impulsive noise (*i.e.,* sub-bottom profiler). Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov 1995; Mooney *et al.,* 2009b), especially for species with echolocation capabilities. Therefore, it is likely that marine mammals will perceive the acoustic signals associated with the HRG survey equipment as being intermittent rather than continuous, and we base our takes from these sources on exposures to the 160 dB threshold.

The data used as the basis for estimating cetacean density (''D'') for the Lease Area are sightings per unit effort (SPUE) derived by Duke University (Roberts *et al.,* 2016). For pinnipeds, the only available comprehensive data for seal abundance is the Northeast Navy Operations Area (OPAREA) Density Estimates (DoN 2007). SPUE (or, the relative abundance of species) is derived by using a measure of survey effort and number of individual cetaceans sighted. SPUE allows for comparison between discrete units of time (*i.e.* seasons) and space within a project area (Shoop and Kenney 1992). The Duke University (Roberts *et al.,* 2016) cetacean density data represent models derived from aggregating line-transect surveys conducted over 23 years by 5 institutions (NMFS Northeast Fisheries Science Center (NEFSC), New Jersey Department of Environmental Protection (NJDEP), NMFS Southeast Fisheries Science Center (SEFSC), University of North Carolina Wilmington (UNCW), Virginia Aquarium & Marine Science Center (VAMSC)), the results of which are freely available online at the Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations (OBIS–SEAMAP) repository. Monthly density values were within the survey area were averaged by season to provide seasonal density estimates. The OPAREA Density Estimates (DoN 2007) used for pinniped densities were based on data collected through NMFS NWFSC aerial surveys conducted between 1998 and 2005.

The Zone of influence (ZOI) is the extent of the ensonified zone in a given day. The ZOI was calculated using the following equations:

- Stationary source (*e.g.* DP thruster): $\pi r^2$
- Mobile source (*e.g.* sparkers): (distance/day * 2r) + $\pi r^2$

Where distance is the maximum survey trackline per day (177.6 km) and r is the distance to the 160 dB (for impulsive sources) and 120 dB (for non-impulsive sources) isopleths. The isopleths were calculated using practical spreading.

Estimated takes were calculated by multiplying the species density (animals per $km^2$) by the appropriate ZOI, multiplied by the number of appropriate days (*e.g.* 42 for HRG activities or 12 for geotechnical activities) of the specified activity. A detailed description of the acoustic modeling used to calculate zones of influence is provided in Ocean Wind's IHA application (also see the discussion in the *Mitigation Measures* section below).

Ocean Wind used a ZOI of 26.757 $km^2$ and a survey period of 42 days, which includes estimated weather downtime, to estimate take from use of the HRG survey equipment during geophysical survey activities. The ZOI is based on the worst case (since it assumes the higher powered GeoSource 800 sparker will be operating all the time) and a maximum survey trackline of 110.4 mi (177.6 km) per day. Based on the planned HRG survey schedule (June 2017), take calculations were based on the summer seasonal species density as derived from Roberts *et al.* (2016) for cetaceans and seasonal OPAREA density estimates (DoN, 2007) for pinnipeds. The resulting take estimates

(rounded to the nearest whole number) are presented in Table 4.

TABLE 4—ESTIMATED LEVEL B HARASSMENT TAKES FOR HRG SURVEY ACTIVITIES

| Species | Density for summer (No./km$^2$) | Calculated take (No.) | Requested take authorization (No.) | Percentage of stock potentially affected |
|---|---|---|---|---|
| Fin Whale | .0008 | 0.89 | *5 | 0.061 |
| Bottlenose Dolphin | .2534 | 284.7 | 285 | 0.385 |
| Short beaked common Dolphin | .0282 | 31.69 | 32 | 0.047 |
| Harbor Porpoise | .0012 | 1.34 | *4 | 0.006 |

* Requested take authorization was increased to account for average group size of fin whales (5) and harbor porpoise (4).

Ocean Wind used a ZOI of 0.31 m$^2$ (0.79 km$^2$) and a maximum DP thruster use period of 12 days to estimate take from use of the DP thruster during geotechnical survey activities. The ZOI represents the field-verified distance to the 120 dB isopleth for DP thruster use. Based on the planned geotechnical survey schedule (September 2017), take calculations were based on the fall seasonal species density estimates (Roberts *et al.,* 2016; DoN, 2007) (Table 5). The resulting take estimates (rounded to the nearest whole number) based upon these conservative assumptions for bottlenose dolphins and harbor seals are presented in Table 5. These numbers are based on 12 days and represent only 0.001 percent of the stock for each of these 2 species. Take estimates were increased to take into account average group size where needed (fin whale and harbor porpoise).

TABLE 5—ESTIMATED LEVEL B HARASSMENT TAKES FOR GEOTECHNICAL SURVEY ACTIVITIES

| Species | Density for fall (No./100 km$^2$) | Calculated take (No.) | Requested take authorization (No.) | Percentage of stock potentially affected |
|---|---|---|---|---|
| Bottlenose Dolphin | 11.44 | 1.08 | *1 | 0.001 |
| Harbor seal | 9.74 | 0.92 | 1 | 0.001 |

* It is understood that typical pod size for bottlenose dolphins can be 2 to 15 individuals (NOAA 2015b). Given that take for this species has been requested to cover HRG survey activities, in conjunction with mitigation measures, the Applicant has determined that increasing take to account for group size is not necessary.

Ocean Wind's requested take numbers are provided in Tables 4 and 5 and are also the number of takes NMFS is authorizing. Ocean Wind's calculations do not take into account whether a single animal is harassed multiple times or whether each exposure is a different animal. Therefore, the numbers in Tables 4 and 5 are the maximum number of animals that may be harassed during the HRG and geotechnical surveys (*i.e.,* Ocean Wind assumes that each exposure event is a different animal). These estimates do not account for prescribed mitigation measures that Ocean Wind will implement during the specified activities and the fact that shutdown/powerdown procedures shall be implemented if an animal enters within 200 m of the vessel during HRG activities, and 500 m during geotechnical activities, further reducing the potential for any takes to occur during these activities.

Ocean Wind used NMFS' Guidance (NMFS 2016) to determine sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by injury, in the form of PTS, might occur. The functional hearing groups and the associated PTS onset acoustic thresholds are indicated in Table 6 below. Ocean Wind used the user spreadsheet to calculate the isopleth for the loudest source (sparker, sub-bottom profiler). The sub-bottom profiler was calculated with the following conditions: Source level at 172.4 rms, vessel velocity of 2.058 m/s, repetition rate of 0.182, pulse duration of 22 ms and a weighting factor adjustment of 10 based on the spectrogram for this equipment (Gardline 2016). Isopleths were less than 3 m for all hearing groups; therefore, no Level A takes were requested. The Geo-Source sparker model used the following parameters: Source level at 188.7 rms Source level, vessel velocity of 2.058 meters per second (m/s), repetition rate of 0.25 seconds, pulse duration of 10 ms and weighting factor adjustment of 3 based on the spectrograms for this equipment. Isopleths were less than 2 m for all hearing groups; therefore, no Level A takes were requested. The DP thruster was defined as non-impulsive static continuous source with an extrapolated source level of 150 dB rms based on far field measurements (Subacoustech 2016), an activity duration of 4 hours and weighting factor adjustment of 2. The transmission loss coefficient of 11.1 was used based on the slope of best fit from field measurements (Subacoustech 2016). Isopleths were less than 1 m for all hearing groups; therefore, no Level A take were requested. No level A take is requested or authorized for any of the sources used during HRG and geotechnical surveys.

TABLE 6—SUMMARY OF PTS ONSET ACOUSTIC THRESHOLDS

| Hearing group | PTS onset acoustic thresholds[1] (Received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Low-frequency cetaceans | *Cell 1:* Lpk,flat: 219 dB; LE,LF,24h: 183 dB. | *Cell 2:* LE,LF,24h: 199 dB. |
| Mid-frequency cetaceans | *Cell 3:* Lpk,flat: 230 dB; LE,MF,24h: 185 dB. | *Cell 4:* LE,MF,24h: 198 dB. |
| High-frequency cetaceans | *Cell 5:* Lpk,flat: 202 dB; LE,HF,24h: 155 dB. | *Cell 6:* LE,HF,24h: 173 dB. |
| Phocid Pinnipeds (underwaters) | *Cell 7:* Lpk,flat: 218 dB; LE,PW,24h: 185 dB. | *Cell 8:* LE,PW,24h: 201 dB. |
| Otariid Pinnipeds (underwater) | *Cell 9:* Lpk,flat: 232 dB; LE,OW,24h: 203 dB. | *Cell 10:* LE,OW,24h: 219 dB. |

[1] NMFS 2016.

**Mitigation Measures**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully balance two primary factors: (1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and the likelihood of effective implementation, and; (2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

With NMFS' input during the application process, and as per the BOEM Lease, Ocean Wind will implement the following mitigation measures during site characterization surveys utilizing HRG survey equipment and use of the DP thruster. The mitigation measures outlined in this section are based on protocols and procedures that have been successfully implemented and resulted in no observed take of marine mammals for similar offshore projects and previously approved by NMFS (ESS 2013; Dominion 2013 and 2014).

*Marine Mammal Exclusion Zones*

Protected species observers (PSOs) will monitor the following exclusion/monitoring zones for the presence of marine mammals:

- A 200-m exclusion zone during HRG surveys (this exceeds the estimated Level B harassment isopleth).
- A 500-m monitoring zone during the use of DP thrusters during geotechnical survey activities (this is equal to the Level B harassment isopleth).

The 200 m exclusion zone is the default exclusion zone specified in stipulation 4.4.6.1 of the New Jersey OCS–A 0498 Lease Agreement. The 500 m exclusion zone is based on field-verified distances established during similar survey work conducted within the Bay State Wind Lease Area (Subacoustech 2016).

*Visual Monitoring*

Visual monitoring of the established exclusion zone(s) for the HRG and geotechnical surveys will be performed by qualified and NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. An observer team comprising a minimum of four NMFS-approved PSOs and two certified Passive Acoustic Monitoring (PAM) operators (PAM operators will not function as PSOs), operating in shifts, will be stationed aboard either the survey vessel or a dedicated PSO-vessel. PSOs and PAM operators will work in shifts such that no one monitor will work more than 4 consecutive hours without a 2-hour break or longer than 12 hours during any 24-hour period. During daylight hours the PSOs will rotate in shifts of one on and three off, while during nighttime operations PSOs will work in pairs. The PAM operators will also be on call as necessary during daytime operations should visual observations become impaired. Each PSO will monitor 360 degrees of the field of vision.

PSOs will be responsible for visually monitoring and identifying marine mammals approaching or within the established exclusion zone(s) during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. PAM operators will communicate detected vocalizations to the Lead PSO on duty, who will then be responsible for implementing the necessary mitigation procedures. A mitigation and monitoring communications flow diagram has been included as Appendix A in the IHA application.

PSOs will be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Digital single-lens reflex

camera equipment will be used to record sightings and verify species identification. During night operations, PAM (see *Passive Acoustic Monitoring* requirements below) and night-vision equipment in combination with infrared technology will be used (Additional details and specifications are provided in Ocean Wind's application in Appendix B for night-vision devices and Appendix C for infrared video monitoring technology). Position data will be recorded using hand-held or vessel global positioning system (GPS) units for each sighting.

The PSOs will begin observation of the exclusion zone(s) at least 60 minutes prior to ramp-up of HRG survey equipment. Use of noise-producing equipment will not begin until the exclusion zone is clear of all marine mammals for at least 60 minutes, as per the requirements of the BOEM Lease.

If a marine mammal is detected approaching or entering the 200-m exclusion zones during the HRG survey, or the 500-m monitoring zone during DP thrusters use, the vessel operator will adhere to the shutdown (during HRG survey) or powerdown (during DP thruster use) procedures described below to minimize noise impacts on the animals.

At all times, the vessel operator will maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below. These stated requirements will be included in the site-specific training to be provided to the survey team.

*Vessel Strike Avoidance*

The Applicant will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammal and sea turtle sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures will include the following, except under extraordinary circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators will comply with 10 knot (<18.5 km per hour [km/h]) speed restrictions in any Dynamic Management Area (DMA). In addition, all vessels operating from November 1 through July 31 will operate at speeds of 10 knots (<18.5 km/h) or less.
- All survey vessels will maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale.
- If underway, vessels must steer a course away from any sited North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 500 m minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 100 m to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m.
- All vessels will maintain a separation distance of 100 m or greater from any sighted non-delphinoid (*i.e.,* mysticetes and sperm whales) cetaceans. If sighted, the vessel underway must reduce speed and shift the engine to neutral and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m.
- All vessels will maintain a separation distance of 50 m or greater from any sighted delphinoid cetacean. Any vessel underway will remain parallel to a sighted delphinoid cetacean's course whenever possible and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or abeam (*i.e.,* moving away and at a right angle to the centerline of the vessel) of the underway vessel.
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

The training program will be provided to NMFS for review and approval prior to the start of surveys. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey event.

*Seasonal Operating Requirements*

Between watch shifts, members of the monitoring team will consult the NMFS North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. The planned survey activities however, will occur outside of the SMA located off the coasts of Delaware and New Jersey. The planned survey activities will also occur in June/July and September, which is outside of the seasonal mandatory speed restriction period for this SMA (November 1 through April 30).

Throughout all survey operations, Ocean Wind will monitor the NMFS North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS should establish a DMA in the Lease Area under survey, within 24 hours of the establishment of the DMA Ocean Wind will work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

*Passive Acoustic Monitoring*

As per the BOEM Lease, alternative monitoring technologies (*e.g.,* active or passive acoustic monitoring) are required if a Lessee intends to conduct geophysical surveys at night or when visual observation is otherwise impaired. To support 24-hour HRG survey operations, Ocean Wind will use certified PAM operators with experience reviewing and identifying recorded marine mammal vocalizations, as part of the project monitoring during nighttime operations to provide for optimal acquisition of species detections at night, or as needed during periods when visual observations may be impaired. In addition, PAM systems shall be employed during daylight hours to support system calibration and PSO and PAM team coordination, as well as in support of efforts to evaluate the effectiveness of the various mitigation techniques (*i.e.,* visual observations during day and night, compared to the PAM detections/operations).

Given the range of species that could occur in the Lease Area, the PAM system will consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 75 Hz to 30 kHz). Monitoring of the PAM system will be conducted from a customized processing station aboard the HRG survey vessel. The on-board processing station provides the interface between the PAM system and the operator. The PAM operator(s) will monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). Ocean Wind plans to use PAMGuard software for ''target motion analysis'' to support localization in relation to the identified exclusion zone. PAMGuard is an open source and versatile software/hardware interface to enable flexibility in the

configuration of in-sea equipment (number of hydrophones, sensitivities, spacing, and geometry). PAM operators will immediately communicate detections/vocalizations to the Lead PSO on duty who will ensure the implementation of the appropriate mitigation measure (*e.g.,* shutdown) even if visual observations by PSOs have not been made.

*Ramp-Up*

As per the BOEM Lease, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. A ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Lease Area by allowing them to vacate the area prior to the commencement of survey equipment use. The ramp-up procedure will not be initiated during daytime, night time, or periods of inclement weather if the exclusion zone cannot be adequately monitored by the PSOs using the appropriate visual technology (*e.g.,* reticulated binoculars, night vision equipment) and/or PAM for a 60-minute period. A ramp-up will begin with the power of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The power will then be gradually turned up and other acoustic sources added such that the source level will increase in steps not exceeding 6 dB per 5-minute period. If marine mammals are detected within the HRG survey exclusion zone prior to or during the ramp-up, activities will be delayed until the animal(s) has moved outside the monitoring zone and no marine mammals are detected for a period of 60 minutes.

The DP vessel thrusters will be engaged to support the safe operation of the vessel and crew while conducting geotechnical survey activities and require use as necessary. Therefore, there is no opportunity to engage in a ramp-up procedure.

*Shutdown and Powerdown*

*HRG Survey*—The exclusion zone(s) around the noise-producing activities (HRG survey equipment) will be monitored, as previously described, by PSOs and at night by PAM operators for the presence of marine mammals before, during, and after any noise-producing activity. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement should be discussed only after shutdown.

As per the BOEM Lease, if a non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean is detected at or within the established exclusion zone (200-m exclusion zone), an immediate shutdown of the HRG survey equipment is required. Subsequent restart of the electromechanical survey equipment must use the ramp-up procedures described above and may only occur following clearance of the exclusion zone for 60 minutes. These are extremely conservative shutdown zones, as the 200-m exclusion radii exceed the distances to the estimated Level B harassment isopleths (75.28 m).

As per the BOEM Lease, if a delphinoid cetacean or pinniped is detected at or within the exclusion zone, the HRG survey equipment (including the sub-bottom profiler) must be powered down to the lowest power output that is technically feasible. Subsequent power up of the survey equipment must use the ramp-up procedures described above and may occur after (1) the exclusion zone is clear of a delphinoid cetacean and/or pinniped for 60 minutes or (2) a determination by the PSO after a minimum of 10 minutes of observation that the delphinoid cetacean or pinniped is approaching the vessel or towed equipment at a speed and vector that indicates voluntary approach to bow-ride or chase towed equipment.

If the HRG sound source (including the sub-bottom profiler) shuts down for reasons other than encroachment into the exclusion zone by a marine mammal including but not limited to a mechanical or electronic failure, resulting in the cessation of sound source for a period greater than 20 minutes, a restart for the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone of all cetaceans and pinnipeds for 60 minutes. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its operational level as long as visual surveys were continued diligently throughout the silent period and the exclusion zone remained clear of cetaceans and pinnipeds. If the visual surveys were not continued diligently during the pause of 20 minutes or less, a restart of the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone for all cetaceans and pinnipeds for 60 minutes.

*Geotechnical Survey (DP Thrusters)*—During geotechnical survey activities, a constant position over the drill or CPT site must be maintained to ensure the integrity of the survey equipment. Any stoppage of DP thruster during the geotechnical activities has the potential to result in significant damage to survey equipment. Therefore, during geotechnical survey activities, if marine mammals enter or approach the established exclusion and monitoring zone, Ocean Wind shall reduce DP thruster to the maximum extent possible, except under circumstances when reducing DP thruster use would compromise safety (both human health and environmental) and/or the integrity of the equipment. Reducing thruster energy will effectively reduce the potential for exposure of marine mammals to sound energy. After decreasing thruster energy, PSOs will continue to monitor marine mammal behavior and determine if the animal(s) is moving towards or away from the established monitoring zone. If the animal(s) continues to move towards the sound source then DP thruster use will remain at the reduced level. Normal use will resume when PSOs report that the marine mammals have moved away from and remained clear of the monitoring zone for a minimum of 60 minutes since the last sighting.

Based on our evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the planned mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations (ITAs) must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring measures prescribed by NMFS should contribute to improved understanding of one or more of the following general goals:

- Occurrence of marine mammal species or stocks in the action area (*e.g.,* presence, abundance, distribution, density).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

Ocean Wind submitted marine mammal monitoring and reporting measures as part of the IHA application. These measures are described below.

*Visual Monitoring*—Visual monitoring of the established Level B harassment zones (200-m radius during HRG surveys (note that this is the same as the mitigation exclusion/shutdown zones established for HRG survey sound sources); 500-m radius during DP thruster use (note that this is the same as the mitigation powerdown zone established for DP thruster sound sources)) will be performed by qualified and NMFS-approved PSOs (see discussion of PSO qualifications and requirements in *Marine Mammal Exclusion Zones* above).

The PSOs will begin observation of the monitoring zone during all HRG survey activities and all geotechnical operations where DP thrusters are employed. Observations of the monitoring zone will continue throughout the survey activity and/or while DP thrusters are in use. PSOs will be responsible for visually monitoring and identifying marine mammals approaching or entering the established monitoring zone during survey activities.

Observations will take place from the highest available vantage point on the survey vessel. General 360-degree scanning will occur during the monitoring periods, and target scanning by the PSO will occur when alerted of a marine mammal presence.

Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates and locations of construction operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age classification (if known), numbers, behavior); and details of any observed ''taking'' (behavioral disturbances or injury/mortality). The data sheet will be provided to both NMFS and BOEM for review and approval prior to the start of survey activities. In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals. A briefing will also be conducted between the survey supervisors and crews, the PSOs, and Ocean Wind. The purpose of the briefing will be to establish responsibilities of each party, define the chains of command, discuss communication procedures, provide an overview of monitoring purposes, and review operational procedures.

*Acoustic Field Verification*—As per the requirements of the BOEM Lease, field verification of the exclusion/monitoring zones will be conducted to determine whether the zones correspond accurately to the relevant isopleths and are adequate to minimize impacts to marine mammals. The details of the field verification strategy will be provided in a Field Verification Plan no later than 45 days prior to the commencement of field verification activities.

Ocean Wind must conduct field verification of the exclusion zone (the 160 dB isopleth) for HRG survey equipment and the powerdown zone (the 120 dB isopleth) for DP thruster use for all equipment operating below 200 kHz. Ocean Wind must take acoustic measurements at a minimum of two reference locations and in a manner that is sufficient to establish source level (peak at 1 meter) and distance to the 160 dB isopleth (the Level B harassment zones for HRG surveys) and 120 dB isopleth (the Level B harassment zone) for DP thruster use. Sound measurements must be taken at the reference locations at two depths (*i.e.,* a depth at mid-water and a depth at approximately 1 meter (3.28 ft) above the seafloor).

Ocean Wind may use the results from its field-verification efforts to request modification of the exclusion/monitoring zones for the HRG or geotechnical surveys. Any new exclusion/monitoring zone radius proposed by Ocean Wind must be based on the most conservative measurements (*i.e.,* the largest safety zone configuration) of the target Level A or Level B harassment acoustic threshold zones. The modified zone must be used for all subsequent use of field-verified equipment. Ocean Wind must obtain approval from NMFS and BOEM of any new exclusion/monitoring zone before it may be implemented and the IHA shall be modified accordingly.

*Reporting Measures*

The Applicant will provide the following reports as necessary during survey activities:

• The Applicant will contact NMFS and BOEM within 24 hours of the commencement of survey activities and again within 24 hours of the completion of the activity.

• As per the BOEM Lease: Any observed significant behavioral reactions (*e.g.,* animals departing the area) or injury or mortality to any marine mammals must be reported to NMFS and BOEM within 24 hours of observation. Dead or injured protected species are reported to the NMFS Greater Atlantic Regional Fisheries Office (GARFO) Stranding Hotline (800–900–3622) within 24 hours of sighting, regardless of whether the injury is caused by a vessel. In addition, if the injury of death was caused by a collision with a project related vessel, Ocean Wind must ensure that NMFS and BOEM are notified of the strike within 24 hours. Additional reporting requirements for injured or dead animals are described below (*Notification of Injured or Dead Marine Mammals*).

• *Notification of Injured or Dead Marine Mammals*—In the unanticipated event that the specified HRG and geotechnical activities lead to an injury of a marine mammal (Level A harassment) or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Ocean Wind will immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the NOAA GARFO Stranding Coordinator. The report will include the following information:

• Time, date, and location (latitude/longitude) of the incident;

• Name and type of vessel involved;

• Vessel's speed during and leading up to the incident;

• Description of the incident;

• Status of all sound source use in the 24 hours preceding the incident;

• Water depth;

• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the event. NMFS will work with Ocean Wind to minimize reoccurrence of such an event in the future. Ocean Wind will not resume activities until notified by NMFS.

In the event that Ocean Wind discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), Ocean Wind will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the GARFO Stranding Coordinator. The report will include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with Ocean Wind to determine if modifications in the activities are appropriate.

In the event that Ocean Wind discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Ocean Wind will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, and the GARFO Regional Stranding Coordinator, within 24 hours of the discovery. Ocean Wind will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Ocean Wind can continue its operations under such a case.

• Within 90 days after completion of the marine site characterization survey activities, a technical report will be provided to NMFS and BOEM that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.
• In addition to the Applicant's reporting requirements outlined above, Ocean Wind will provide an assessment report of the effectiveness of the various mitigation techniques, *i.e.,* visual observations during day and night, compared to the PAM detections/operations. This will be submitted as a draft to NMFS and BOEM 30 days after the completion of the HRG and geotechnical surveys and as a final version 60 days after completion of the surveys.

**Negligible Impact Analysis and Determinations**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering the authorized number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration, etc.), as well as effects on habitat, the status of the affected stocks, and the likely effectiveness of the mitigation. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As discussed in the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section, permanent threshold shift, masking, non-auditory physical effects, and vessel strike are not expected to occur. Further, once an area has been surveyed, it is not likely that it will be surveyed again, thereby reducing the likelihood of repeated impacts within the project area.

Potential impacts to marine mammal habitat were discussed previously in this document (see the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section). Marine mammal habitat may be impacted by elevated sound levels and some sediment disturbance, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile and are broadly distributed throughout the Lease Area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Furthermore, there are no rookeries or mating grounds known to be biologically important to marine mammals within the planned project area. A biologically important feeding area for North Atlantic right whale encompasses the Lease Area (LaBrecque *et al.,* 2015); however, there is no temporal overlap between the biologically important area (BIA) (effective March-April; November-December) and the planned survey activities (June-July; September). There is one ESA-listed species for which takes are authorized: The fin whale. There are currently insufficient data to determine population trends for fin whale (Waring *et al.,* 2015); however, we are authorizing five takes for this species, therefore, we do not expect population-level impacts. There is no designated critical habitat for any ESA-listed marine mammals within the Lease Area, and none of the stocks for non-listed species taken are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

The planned mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy and (2) reducing the intensity of exposure within a certain distance by reducing the DP thruster power. Additional vessel strike avoidance requirements will further mitigate potential impacts

to marine mammals during vessel transit to and within the Study Area.

Ocean Wind did not request, and NMFS is not authorizing, take of marine mammals by injury, serious injury, or mortality. NMFS expects that most takes will be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary avoidance of the area or decreased foraging (if such activity were occurring)—reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). This is largely due to the short time scale of the planned activities, the low source levels and intermittent nature of many of the technologies planned to be used, as well as the required mitigation measures.

NMFS concludes that exposures to marine mammal species and stocks due to Ocean Wind's HRG and geotechnical survey activities will result in only short-term (temporary and short in duration) and relatively infrequent effects to individuals exposed and not of the type or severity that will be expected to be additive for the very small portion of the stocks and species likely to be exposed. Given the duration and intensity of the activities (including the mitigation) NMFS does not anticipate the number of takes to impact annual rates of recruitment or survival. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success, are not expected.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of the relevant species or stock size in our determination of whether an authorization is limited to small numbers of marine mammals.

TABLE 7—SUMMARY OF POTENTIAL MARINE MAMMAL TAKES AND PERCENTAGE OF STOCKS AFFECTED

| Species | Requested take authorization (number) | Stock abundance estimate | Percentage of stock potentially affected |
|---|---|---|---|
| Fin Whale (*Balaenoptera physalus*) | *5 | 1,618 | 0.31 |
| Bottlenose Dolphin (*Tursiops truncatus*) | 286 | 77,532 | 0.368 |
| Short beaked common Dolphin (*Delphinus delphis*) | 32 | 70,184 | 0.045 |
| Harbor Porpoise (*Phocoena phocoena*) | *4 | 79,883 | 0.005 |
| Harbor Seal (*Phoca vitulina*) | 1 | 75,834 | 0.001 |

*Modeled take of this species was increased to account for average group size.

The authorized takes for the HRG and geotechnical surveys represent 0.31 percent of the WNA stock of fin whale, 0.045 percent of the WNA stock of short-beaked common dolphin, 0.368 percent of the Western north Atlantic, offshore stock of bottlenose dolphin, 0.005 percent of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, and 0.001 percent of the WNA stock of harbor seal (Table 7). These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment and are extremely small numbers (less than 1 percent) relative to the affected species or stock sizes.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act**

Issuance of an MMPA authorization requires compliance with the ESA. Within the project area, fin, humpback, and North Atlantic right whale are listed as endangered under the ESA. Under section 7 of the ESA, BOEM consulted with NMFS on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NOAA's GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of fin whale, humpback whale, or North Atlantic right whale. The Biological Opinion can be found online at *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm.* NMFS is also consulting internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Following issuance of the Ocean Wind's IHA, the Biological Opinion may be amended to include an incidental take exemption for these marine mammal species, as appropriate.

**National Environmental Policy Act (NEPA)**

NMFS prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and signed a Finding of No Significant Impact (FONSI) in June 2017. The EA and FONSI can be found at *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm.*

**Authorization**

NMFS has issued an IHA to Ocean Wind for the potential harassment of small numbers of five marine mammal species incidental to the marine site characterization project off the coast of New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0498), provided the previously mentioned mitigation, monitoring and reporting.

Dated: June 30, 2017.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2017–14260 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF519**

### Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Post Data-Workshop Webinar Gulf of Mexico Gray Snapper; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of SEDAR 51 assessment webinar I for Gulf of Mexico gray snapper.

**SUMMARY:** The SEDAR 51 assessment process of Gulf of Mexico gray snapper will consist of a Data Workshop, a series of Assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 51 Assessment Webinar I will be held July 26, 2017, from 1 p.m. to 3 p.m., Eastern Time.

**ADDRESSES:** The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; phone: (843) 571–4366; email: *Julie.neer@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment 1 webinar are as follows:

1. Using datasets and initial assessment analysis recommended from the Data Webinar, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

**Note:** The times and sequence specified in this agenda are subject to change.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–14266 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF515**

### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of meetings of the South Atlantic Fishery Management Council's Citizen Science Advisory Panel Action Teams.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold three meetings of its Citizen Science Advisory Panel Action Teams via webinar.

**DATES:** The meetings will be held July 24, 2017 at 7 p.m., July 27, 2017 at 10 a.m., and July 27, 2017 at 1 p.m. Each meeting is scheduled to last approximately 90 minutes.

**ADDRESSES:**

*Meeting address:* The meetings will be held via webinar and are open to members of the public to listen. Webinar registration is required and registration links will be posted to the Council's Web site at *www.safmc.net.*

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Amber Von Harten, Citizen Science Program Manager, SAFMC; phone: (843) 302–8433 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *amber.vonharten@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The South Atlantic Fishery Management Council is developing a Citizen Science Program. In March 2016, the Council adopted the Citizen Science Program Blueprint outlining specific program components needed to develop the Citizen Science Program. In the Citizen Science Program Blueprint, development of Action Teams in the areas of *Volunteers, Data Management, Projects/Topics Management, Finance,* and *Communication/Outreach/Education*

were identified as necessary program components. To develop these five program components the Council created the Citizen Science Advisory Panel Pool and appointed members of the advisory panel to serve on Action Teams (sub-panels) to specifically address each of the five program areas—*Volunteers, Data Management, Projects/Topics Management, Finance,* and *Communication/Outreach/Education.*

The Council will hold three webinar meetings for members of the Citizen Science Advisory Panel Action Teams. The webinar meetings are being held to provide an introduction to the Council's Citizen Science program and the process and operation of the Action Teams. The three webinar meetings will cover the same agenda items and are being scheduled to address the availability of Action Team members.

Items to be addressed during these meetings:

1. The Council's Citizen Science Program development
2. Operation and structure of the Action Teams
3. Terms of Reference for each Action Team
4. Schedule of Action Team webinar meetings

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–14265 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF491**

### Streamlining Regulatory Processes and Reducing Regulatory Burden

**AGENCY:** National Marine Fisheries Service (NMFS) and National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of ongoing efforts to evaluate and improve our regulations and regulatory processes, NOAA through NMFS and NOS seeks public input on identifying existing regulations that: Eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or interfere with regulatory reform initiatives and policies; are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001; and/or derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified. NMFS and NOS also seek public comment on the efficiency and effectiveness of current regulatory processes, and specifically, if current regulatory processes can be further streamlined or expedited in a manner consistent with applicable law.

**DATES:** Comments are due August 21, 2017.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2017–0067, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0067,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Kelly Denit, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (mark outside of envelope ''Streamlining Regulatory Processes and Reducing Regulatory Burden'').

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS and/or NOS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS and/or NOS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Kelly Denit, (301) 427–8500.

**SUPPLEMENTARY INFORMATION:**

### Background

A series of recent Executive Orders aimed at eliminating, improving, and streamlining current regulations and associated regulatory processes in a variety of areas have been issued. On January 24, 2017, President Trump issued Executive Order (E.O.) 13766, ''Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects'' (82 FR 8657, January 30, 2017). This E.O. requires infrastructure decisions to be accomplished with maximum efficiency and effectiveness, while also respecting property rights and protecting public safety. Additionally, the E.O. makes it a policy of the executive branch to ''streamline and expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects.''

On January 30, 2017, President Trump issued E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). E.O. 13771 provides that ''it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.'' Toward that end, E.O. 13771 directs that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

On February 24, 2017, President Trump issued E.O. 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a federal policy ''to alleviate unnecessary regulatory burdens placed on the American people'' (82 FR 12285, March 1, 2017). Among other issues, E.O. 13777 directs Federal agencies to establish a Regulatory Reform Task Force (Task Force), which will ''evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.'' Further, the E.O. directs each Task Force to identify regulations that meet the following criteria: Eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001; and/or derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified. Section 3(e) of

E.O. 13777 directs the Task Force to ''seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations,'' on regulations that meet any of the criteria mentioned above. Through this notice, NMFS and NOS solicit such input from the public to inform NOAA and the Department of Commerce Task Force's evaluation of existing regulations.

On March 28, 2017, President Trump issued E.O. 13783, entitled ''Promoting Energy Independence and Economic Growth'' (82 FR 16093, March 31, 2017). Among other things, E.O. 13783 requires the heads of agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review does not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth elsewhere in that Executive Order.

Lastly, on April 28, 2017, President Trump issued E.O. 13795, ''Implementing an America-First Offshore Energy Strategy'' (82 FR 20815, April 28, 2017). Among the requirements of E.O. 13795 is section 10, which calls for a review of NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing as follows: ''The Secretary of Commerce shall review NOAA's Technical Memorandum NMFS–OPR–55 of July 2016 (Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing) for consistency with the policy set forth in Section 2 of this order and, after consultation with the appropriate Federal agencies, take all steps permitted by law to rescind or revise that guidance, if appropriate.'' In response, NMFS published a notice in the **Federal Register** requesting comments relating to the review of the Technical Guidance under section 10 of E.O. 13795 (82 FR 24950, May 31, 2017). Therefore, the public does not need to provide comments on this topic in response to this particular notice.

It is important to note the Administration has already requested comment on the review of certain Marine National Monuments and National Marine Sanctuaries via two previous notices. Under Executive Order 13792, ''Review of Designations Under the Antiquities Act'' (signed April 26, 2017), the Department of the Interior is conducting a review of national monuments (See the Department of the Interior's **Federal Register** Notice ''Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment;'' 82 FR 22016, May 11, 2017). The Department of Commerce is collaborating with the Department of the Interior on this review for marine national monuments, in conjunction with Department of Commerce's review under Executive Order 13795. Pursuant to Executive Order 13795, ''Implementing an America-First Offshore Energy Strategy'' (signed on April 28, 2017), the Department of Commerce is conducting a review of all designations and expansions of national marine sanctuaries and marine national monuments since April 28, 2007 (82 FR 28827, June 26, 2017). Therefore, the public does not need to provide comments on these topics in response to this particular notice.

In accordance with the Administration's Executive Orders cited above, NMFS and NOS invite comment from the public, including entities significantly affected by Federal regulations, as well as State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations. Since the regulations and processes NMFS and NOS follow under each of the topics identified in the Executive Orders are similar, we are issuing a single request for comment to ensure the public has the opportunity to comment in a coordinated fashion and do not have to respond to multiple requests for comment.

In addition to the executive orders cited, NMFS and NOS invite comment related to the application of Federal Regulations to marine aquaculture. Currently, the permitting for marine aquaculture is a complicated, multi-agency, multi-step process, and NMFS and NOS seek comment on improvements that can be made by the Department of Commerce within legislative mandates, including suggestions on interagency processes. Information about the role of NMFS, NOS, and other federal agencies in the regulation of marine aquaculture is available online at *http://www.nmfs.noaa.gov/aquaculture/policy/24_regulating_aquaculture.html.*

**List of Processes and Regulations for Commenters**

NMFS and NOS specifically request comments on existing processes and regulations under the agencies' statutory mandates. NMFS and NOS are broadly seeking comments on any existing Agency regulation the public thinks meet the criteria described in this background section. A brief description of each statute is provided below and examples of regulations the public may choose to comment on are provided in some cases. Additionally, NMFS and NOS request comments on existing processes and regulations for marine aquaculture.

*Existing Processes and Regulations Under the Agencies' Statutory Mandates*

a. Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*

- The Marine Mammal Protection Act (MMPA) generally prohibits the ''take'' of marine mammals by U.S. citizens or by any person or vessel in waters under U.S. jurisdiction, with certain exceptions.
- Authorizations under Section 101(a)(5) for the take of marine mammals incidental to certain activities. Sections 101(a)(5)(A) & (D) of the MMPA allow for the authorization of take of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, provided certain findings are made and appropriate mitigation, monitoring, and reporting requirements are set forth. NMFS has issued regulations implementing standards and procedures for the 101(a)(5) process.

b. Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*

- The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are endangered or threatened throughout all or a significant portion of their range, and the conservation of the ecosystems on which they depend.
- Section 7(a)(1) coordination with other Federal agencies to help conserve listed species and the habitats on which they depend. Federal agencies, under section 7(a)(1) of the Endangered Species Act (ESA), must utilize their authorities to carry out programs to conserve threatened and endangered species. NOAA Fisheries assists these agencies with the development of these conservation programs for marine species.
- Section 7(a)(2) consultations (both formal and informal) with Federal agencies on Federal activities which may affect a listed species. For example, NMFS has endeavored to improve this consultation process by increasing the use of programmatic consultations for projects of a similar nature.

c. Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

• The Magnuson-Stevens Fishery Conservation and Management Act is the primary law governing marine fisheries management in U.S. federal waters. First passed in 1976, the Magnuson-Stevens Act fosters long-term biological and economic sustainability of our nation's marine fisheries out to 200 nautical miles from shore. Key objectives of the Magnuson-Stevens Act are to: Prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood.

• Exempted fishing permits (50 CFR 600.745(b)). Exempted fishing permits (EFPs) allow necessary research activities that would normally be prohibited by regulations. They are issued to individuals for the purpose of conducting research or other fishing activities using private (non-research) vessels.

• Consultations (both informal and formal) under Essential Fish Habitat (EFH) provisions. An example of how NMFS has worked to increase the efficiency of EFH consultations is the implementation of programmatic consultations—which reduces the overall number of individual consultations and/or the amount of time EFH consultations take. Programmatic consultations also allow for a more rapid assessment of impacts to relevant species.

d. Federal Power Act, 16 U.S.C. 791 *et seq.*

• Conducting studies for hydropower project licensing and relicensing. A project license applicant must consult and, as appropriate, conduct studies with NMFS and other fish and wildlife agencies. An example of how NMFS could improve the efficiency of studies and consultations under the Federal Power Act is by requesting hydropower project license applicants to conduct the appropriate studies on a watershed basis. By working with relevant Federal and state resource agencies, as well as license applicants, to identify, request, and implement studies on a watershed basis for hydropower project licensing and relicensing processes, the overall time and money spent could be reduced in relation to the current project-by-project process.

e. National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*

• Interagency consultations under Section 304(d) of the NMSA. Section 304(d) of the NMSA requires interagency consultation between NOAA and federal agencies taking actions, including authorization of private activities, ''likely to destroy, cause the loss of, or injure a sanctuary resource.'' For example, the Office of National Marine Sanctuaries (ONMS) has worked to integrate the consultation process under the NMSA with other consultation processes under ESA and MMPA, when applicable, for a more efficient and coherent approach to consultation under the NOAA umbrella.

• Program implementation regulations (15 CFR part 922). ONMS regulations prohibit specific kinds of activities, describe and define the boundaries of the designated national marine sanctuaries and set up a system of permits to allow the conduct of certain types of activities.

f. Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*

• Program implementation regulations (15 CFR parts 923 or 930). The CZMA addresses the nation's coastal issues through a voluntary partnership between the federal government and coastal and Great Lakes states and territories to provide the basis for protecting, restoring, and developing our nation's diverse coastal communities, resources, and economies. Currently 34 coastal states participate in the Act and NOAA's CZMA regulations gives states the flexibility to design unique programs that best address their coastal challenges and regulations.

*Marine Aquaculture*

a. Application of the existing NMFS and NOS processes and regulations listed above to marine aquaculture, including interagency processes and coordination with other federal agencies and states; and

b. Regulation of offshore marine aquaculture in federal waters under the Magnuson-Stevens Act.

**Considerations for Commenters**

To maximize the usefulness of comments, NMFS and NOS encourage commenters to provide the following information:

a. *Specific reference.* A specific reference to the process or regulation that imposes the burden that the comment discusses. This should be a citation to the Code of Federal Regulations, a guidance document number, or other relevant agency document(s). A specific reference will assist NMFS and/or NOS with identifying the requirement, the original source of the requirement, and relevant documentation that may describe the history and effects of the requirement.

b. *Description of burden.* A description of the burden that the identified process or regulation imposes on businesses, States, tribes, or other affected entities. A comment that describes how the process or regulation impedes efficiency is more useful than a comment that merely asserts that it is burdensome. Comments that reflect experience with the requirement and provide data describing that experience are more credible than comments that are not tied to direct experience. Verifiable, quantifiable data describing burdens are more useful than anecdotal descriptions.

c. *Description of more effective or less burdensome alternative(s).* If the commenter believes that the objective that motivated the process or regulation may be achieved using a more effective alternative, the commenter should describe that alternative in detail. Likewise, if the commenter believes that there is not a more effective alternative or there is not a legitimate objective motivating the requirement, then that should be explained in the comment.

**Current Review Processes**

Processes associated with the Magnuson-Stevens Act (Act) currently provide opportunities for public review. The Act created eight regional Fishery Management Councils (Councils) responsible for the fisheries that require conservation and management in their region. The Councils are designed to be a stakeholder-driven management body and thus, most of the voting members of a Council are active in or have unique knowledge of the fisheries in their geographic region. Through these Councils, stakeholders provide direct and substantive input into the development and regular modification of fishery management plans and regulations. Councils balance both conservation and management needs for a fishery with the operational needs of fishing businesses. NMFS and the Councils work together to revise or remove regulations identified by stakeholders that are outdated, ineffective, insufficient, or excessively burdensome to the relevant fishery. Therefore, any public comments received on Council regulations will be forwarded to the appropriate Council for consideration.

Additionally, NMFS is reviewing regulations, as required, under section 610 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* which had, or will have, a significant impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. Per section 610(c) of the RFA, NMFS published a notice in the **Federal Register** listing the regulations currently under review (82 FR 26419, June 7, 2017). Public comments received

on both the RFA section 610 notice and this notice will inform NMFS' regulatory reviews required under relevant Executive Orders, including E.O 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' and E.O. 13777, ''Enforcing the Regulatory Reform Agenda.''

Finally, comments related to statutory changes will not be considered as part of this notice; however, NMFS and/or NOS will take them into account in the future if needed.

Dated: June 30, 2017.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2017–14167 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF522**

### Mid-Atlantic Fishery Management Council (MAFMC); Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee (MC) will hold a public meeting.

**DATES:** The meeting will be held on Monday, July 24, 2017, from 1 p.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and telephone-only connection details will be available at: *http://www.mafmc.org.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet from 1 p.m. to 5 p.m. to review and discuss previously implemented 2018 commercial and recreational Annual Catch Limits (ACLs) and Annual Catch Targets (ACTs) for these three species and the Monitoring Committee may also recommend potential 2019 ACLs and ACTs for scup. The Monitoring Committee may consider recommending changes to the implemented 2018 ACLs and ACTs and other management measures as necessary. Meeting materials will be posted to *http://www.mafmc.org/* prior to the meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office (302) 526–5251 at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–14268 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF250**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seattle Multimodal Construction Project in Washington State

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to Washington State Department of Transportation (WSDOT) to take small numbers of marine mammals, by harassment, incidental to Seattle Multimodal Construction Project in Washington State.

**DATES:** This authorization is effective from August 1, 2017, through July 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as the issued IHA, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, provided that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals shall be allowed if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking, as well as the other means of effecting the least practicable adverse impact on the species or stock and its habitat (*i.e.,* mitigation) must be prescribed. Last, requirements pertaining to the monitoring and reporting of such taking must be set forth.

Where there is the potential for serious injury or death, the allowance of incidental taking requires promulgation of regulations under MMPA section 101(a)(5)(A). Subsequently, a Letter (or Letters) of Authorization may be issued as governed by the prescriptions established in such regulations, provided that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under MMPA section 101(a)(5)(D), NMFS may authorize incidental taking by harassment only (*i.e.,* no serious injury

or mortality), for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The promulgation of regulations or issuance of IHAs (with their associated prescribed mitigation, monitoring, and reporting) requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**National Environmental Policy Act (NEPA)**

Issuance of an MMPA 101(a)(5) authorization requires compliance with the National Environmental Policy Act.

NMFS determined the issuance of the IHA is consistent with categories of activities identified in CE B4 (issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for which no serious injury or mortality is anticipated) of the Companion Manual for NAO 216–6A and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude this categorical exclusion.

**Summary of Request**

On July 28, 2016, WSDOT submitted a request to NMFS requesting an IHA for the harassment of small numbers of 11 marine mammal species incidental to construction associated with the Seattle Multimodal Project at Colman Dock, Seattle, Washington, between August 1, 2017 and July 31, 2018. NMFS initially determined the IHA application was complete on September 1, 2016. However, WSDOT notified NMFS in November 2016 that the scope of its activities had changed. WSDOT stated that instead of using vibratory hammers for the majority of in-water pile driving and using impact hammer for proofing, it would be required to use impact hammers to drive a large number of piles completely due to sediment conditions at Colman Dock. On March 2, 2017, WSDOT submitted a revised IHA application with updated project description. NMFS determined that the revised IHA application was complete on March 3, 2017.

In the IHA issued to WSDOT, NMFS authorized the Level A and Level B harassment of the following seven marine mammal species/stocks: Harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*P. dalli*).

**Description of Specified Activities**

*Overview*

WSDOT is proposing to preserve the Seattle Ferry Terminal at Colman Dock. The project will reconfigure the dock while maintaining approximately the same vehicle holding capacity as current conditions. The reconfiguration would increase total permanent overwater coverage (OWC) by about 5,400 square feet ($ft^2$) (about 1.7 percent more than existing overwater coverage at the site), due to the new walkway from the King County Passenger Only Ferry (POF) facility to Alaskan Way and new stairways and elevators from the POF to the upper level of the terminal. The additional 5,400 $ft^2$ will be mitigated by removing a portion of Pier 48, a condemned timber structure.

The project will remove the northern timber trestle and replace a portion of it with a new concrete trestle. The area from Marion Street to the north edge of the property will not be rebuilt and will become, after demolition, a new area of open water. A section of fill contained behind a bulkhead underneath the northeast section of the dock will also be removed.

WSDOT will construct a new steel and concrete trestle from Columbia Street northward to Marion Street. Construction of the reconfigured dock will narrow (reduce) the OWC along the shoreline (at the landward edge) by 180 linear feet at the north end of the site, while 30 linear feet of new trestle would be constructed along the shoreline at the south end of the site. The net reduction of OWC in the nearshore zone is 150 linear feet.

The purpose of the Seattle Multimodal Project at Colman Dock is to preserve the transportation function of an aging, deteriorating and seismically deficient facility to continue providing safe and reliable service. The project will also address existing safety concerns related to conflicts between vehicles and pedestrian traffic and operational inefficiencies.

Details of the WSDOT's construction activities are provided in the IHA application and in the **Federal Register** notice for the proposed IHA (82 FR 15497; March 29, 2017).

*Dates and Duration*

Due to NMFS and the U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect Endangered Species Act (ESA) listed salmonids, planned WSDOT in-water construction at this location is limited each year to July 16 through February 15. For this project, in-water construction is planned to take place between August 1, 2017 and February 15, 2018.

The total worst-case time for pile installation and removal is expected to be 83 working days (Table 1).

- Vibratory driving of each of the 101 24-inch (in) steel pile will take approximately 20 minutes, with a maximum of 16 piles installed per day over 7 days.
- Vibratory removal of 103 temporary 24-in diameter steel piles will take approximately 20 minutes per pile, with maximum 16 piles removed per day over 8 days.
- Impact driving (3,000 strikes per pile) of 14 30-in and 201 36-in diameter steel piles will take approximately 45 minutes per pile, with maximum 8 piles per day for a total of 28 days.
- Vibratory driving of 17 30- and 205 36-in diameter steel piles will take 45 minutes per pile, with maximum 8 piles per day over a total of 29 days.
- Vibratory removal of 4-in timber piles will take approximately 15 minutes per pile, with approximately 20 piles removed per day for 11 days.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING DURATIONS

| Method | Pile type | Pile size (inch) | Pile number | Time to vibratory drive per pile/ strikes to impact drive per pile | Duration (days) |
|---|---|---|---|---|---|
| Vibratory removal | Timber | 14 | 215 | 900 seconds | 11 |
| Vibratory removal | Steel | 24 | 103 | 1,200 seconds | 8 |

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING DURATIONS—Continued

| Method | Pile type | Pile size (inch) | Pile number | Time to vibratory drive per pile/ strikes to impact drive per pile | Duration (days) |
|---|---|---|---|---|---|
| Vibratory driving | Steel | 24 | 101 | 1,200 seconds | 7 |
| Vibratory driving | Steel | 30 | 17 | 1,200 seconds | 3 |
| Vibratory driving | Steel | 36 | 205 | 1,200 seconds | 26 |
| Impact driving | Steel | 30 | 14 | 3,000 strikes | 2 |
| Impact driving | Steel | 36 | 201 | 3,000 strikes | 26 |
| Total | | | 856 | | 83 |

*Specified Geographic Region*

The proposed activities will occur at the Seattle Ferry Terminal at Colman Dock, located in the City of Seattle, Washington (see Figure 1–2 of the IHA application).

*Detailed Description of In-Water Pile Driving Associated With Seattle Multimodal Project*

The proposed project has two elements involving noise production that may affect marine mammals: Vibratory hammer driving and removal, and impact hammer driving.

Details of pile driving activities are provided below:

- The 14-in timber piles will be removed with a vibratory hammer (Table 1).
- The 24-in temporary piles will be installed and removed with a vibratory hammer (no proofing) (Table 1).
- Some of the permanent 30- and 36-in steel piles would be installed with a vibratory hammer, and some would be installed with impact hammer (Table 1).

Details of the in-water impact pile driving and vibratory pile driving and removal activities are provided in the **Federal Register** notice for the proposed IHA (82 FR 15497; March 29, 2017). No changes are made since the proposed IHA was published.

**Comments and Responses**

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on March 29, 2017 (82 FR 15497). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). No other comments were received. Specific comments and responses are provided below.

*Comment 1:* The Commission noted that several typographic and analytical errors in the **Federal Register** notice for the proposed IHA. These errors include: (1) Level B harassment for Steller sea lion and Dall's porpoise should be 116 and 143, instead of 114 and 137, respectively; (2) daily maximum number of observed harbor seal and California sea lion in the project vicinity should be 13 and 47, respectively. This would result the estimated Level A and Level B takes of harbor seals to be 364 and 715, respectively; the estimated Level B take of California sea lion to be 3,901; and (3) The most recent harbor porpoise density of 0.69 animal/square kilometer ($km^2$) from Jefferson *et al.* (2016) should be used to calculate harbor porpoise takes.

*Response:* NMFS agrees with the Commission's assessment and made corrections to these errors. Specifically, (1) The estimated Level B takes of Steller sea lion and Dall's porpoise are corrected to 116 and 143, respectively; (2) Used corrected daily maximum number of observed harbor seal and California sea lions to calculate estimated takes, which resulted Level A and Level B takes of harbor seals to be 364 and 715 animals, respectively; and Level B take of California sea lion to be 3,901 animals; and (3) The most recent harbor porpoise density of 0.69 animal/$km^2$ from Jefferson *et al.* (2016) was used to correct harbor porpoise takes, which result estimated 233 Level A and 2,056 Level B takes. All these corrections are included in this document in the Estimated Takes section. The increased takes do not affect our initial analysis of negligible impact determination and small number conclusion as discussed later in this document.

*Comment 2:* The Commission states that it is concerned regarding NMFS appropriateness of the manner in which Level A harassment zones are estimated. The Commission points out that for impact driving of 30- and 36-in piles using three hammers concurrently, the Level A harassment zones for both low- and high-frequency cetaceans were estimated to be much greater (1.85 and 2.84 km, respectively) than the Level B harassment zone (1.20 km). The Commission recommends that NMFS consult with both internal and external scientists and acousticians to determine the relevant accumulation time that could result Level A harassment based on associated permanent threshold shift (PTS) from cumulative sound exposure levels ($SEL_{cum}$).

*Response:* NMFS understands the Commission's concern and is continuing working to improve Level A harassment zone estimation based on realistic noise propagation models and energy accumulation scheme. At current, Level A harassment zones are based on exposure of $SEL_{cum}$ over a period of one working day's pile driving duration or instantaneous peak sound pressure level (SPL), while Level B harassment zones are based on instantaneous root-mean-squared SPL that contains 90 percent of acoustic energy. The difference in the metrics between SEL and SPL in assessing Level A and Level B harassments is the notion that prolonged exposure of intense noise could lead to PTS if the animal chooses to stay within the injury zone. The process of impact assessments will continue to evolve as more scientific data become available.

**Description of Marine Mammals in the Area of Specified Activities**

The marine mammal species under NMFS jurisdiction that have the potential to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), long-beaked common dolphin (*Delphis capensis*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*P. dalli*). A list of marine mammals that have the potential to occur in the vicinity of the action and their legal status under the MMPA and ESA are provided in Table 2. Among these species, northern elephant seal, minke whale, and long-beaked common dolphin are extralimital in the proposed project area. NMFS does not consider take is likely to occur for these species. Therefore, these species are not discussed further in this document.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

| Species | ESA status | MMPA status | Occurrence | Abundance |
|---|---|---|---|---|
| Harbor Seal | Not listed | Non-depleted | Frequent | Unk |
| California Sea Lion | Not listed | Non-depleted | Frequent | 296,750 |
| Northern Elephant Seal | Not listed | Non-depleted | Extralimital | 179,000 |
| Steller Sea Lion (eastern DPS) | Not listed | Non-depleted | Rare | 71,256 |
| Harbor Porpoise | Not listed | Non-depleted | Frequent | 11,233 |
| Dall's Porpoise | Not listed | Non-depleted | Occasional | 25,750 |
| Killer Whale (Southern Resident) | Endangered | Depleted | Occasional | 78 |
| Killer Whale (West Coast transient) | Not listed | Non-depleted | Occasional | 243 |
| Long-beaked Common Dolphin | Not listed | Non-depleted | Extralimital | 101,305 |
| Gray Whale | Not listed | Non-depleted | Occasional | 20,990 |
| Humpback Whale | Endangered | Depleted | Rare | 1,918 |
| Minke Whale | Not listed | Non-depleted | Extralimital | 636 |

General information on the marine mammal species found in Washington coastal waters can be found in Caretta *et al.* (2016), which is available online at: *http://www.nmfs.noaa.gov/pr/sars/pdf/pacific2015_final.pdf.* Refer to that document for information on these species. Specific information concerning these species in the vicinity of the proposed action area is provided in detail in the WSDOT's IHA application and in the **Federal Register** notice for the proposed IHA (82 FR 15497; March 29, 2017).

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analyses and Determination'' section will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potentials, anatomical modeling, and other data, NMFS (2016) designated five ''marine mammal hearing groups'' for marine mammals and estimate the lower and upper frequencies of hearing of the groups. The marine mammal groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 hertz (Hz) and 35 kilohertz (kHz);
- Mid-frequency cetaceans (32 species of dolphins, seven species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, seven species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 275 Hz and 160 kHz;
- Phocid pinnipeds in Water: Functional hearing is estimated to occur between approximately 50 Hz and 86 kHz; and
- Otariid pinnipeds in Water: Functional hearing is estimated to occur between approximately 60 Hz and 39 kHz.

As mentioned previously in this document, eight marine mammal species (five cetacean and three pinniped species) are likely to occur in the vicinity of the Seattle pile driving/removal area. Of the five cetacean species, two belong to the low-frequency cetacean group (gray and humpback whales), one is a mid-frequency cetacean (killer whale), and two high-frequency cetacean (harbor and Dall's porpoises). One species of pinniped is phocid (harbor seal), and two species of pinniped are otariid (California and Steller sea lions). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

The WSDOT's Seattle Colman ferry terminal construction work using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (TTS) (Southall *et al.,* 2007).

*Threshold Shift (noise-induced loss of hearing)*—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience TTS or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 decibel (dB) or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For cetaceans, published data are limited to the captive bottlenose

dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 $\mu Pa^2$ s after integrating exposure. NMFS currently uses the root-mean-square (rms) of received SPL at 180 dB and 190 dB re: 1 μPa as the threshold above which PTS could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt 2010; Finneran *et al.,* 2002; Kastelein and Jennings 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving activity is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). For WSDOT's Seattle Colman Ferry Terminal construction activities, noises from vibratory pile driving and pile removal contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to ongoing shipping, construction and other activities in the Puget Sound.

Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as vibratory pile driving). For the WSDOT's Seattle Colman Ferry Terminal construction activities, both of these noise levels are considered for effects analysis because WSDOT plans to use both impact and vibratory pile driving, as well as vibratory pile removal.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

*Potential Effects on Marine Mammal Habitat*

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by pile driving and removal associated with marine mammal prey species. However, other potential impacts to the surrounding habitat from physical disturbance are also possible. These potential effects are discussed below.

SPLs from impact pile driving have the potential to injure or kill fish in the

immediate area. These few isolated fish mortality events are not anticipated to have a substantial effect on prey species population or their availability as a food resource for marine mammals.

Studies also suggest that larger fish are generally less susceptible to death or injury than small fish. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms. Orientation of fish relative to the shock wave may also affect the extent of injury. Open water pelagic fish (*e.g.,* mackerel) seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the WSDOT's impact pile driving will likely be insignificant to the population as a whole.

For non-impulsive sound such as that of vibratory pile driving, experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993).

During construction activity at Colman Dock, only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on the abilities of marine mammals to feed in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species between March and July.

Short-term turbidity is a water quality effect of most in-water work, including pile driving.

Cetaceans are not expected to be close enough to the Colman terminal to experience turbidity, and any pinnipeds will be transiting the terminal area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

For these reasons, WSDOT's proposed Seattle Multimodal construction at Colman Dock is not expected to have adverse effects to marine mammal habitat in the area.

**Estimated Take**

This section includes an estimate of the number of incidental ''takes'' likely to occur pursuant to this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only means of take expected to result from these activities. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

As described previously in the section Potential Effects of Specified Activities on Marine Mammals and their Habitat, no incidental take is anticipated to result from effects on prey species or as a result of turbidity. Level B Harassment is expected to occur as discussed below and is authorized in the numbers identified below.

As described below, a small number of takes by Level A Harassment are authorized, as the calculation show that Level A takes could occur.

The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or authorized to result from this activity.

*Basis for Takes*

Take estimates are based on average marine mammal density in the project area multiplied by the area size of ensonified zones within which received noise levels exceed certain thresholds (*i.e.,* Level A and/or Level B harassment) from specific activities, then multiplied by the total number of days such activities would occur. Certain adjustments were made for marine mammals whose local abundance are known through long-term monitoring efforts. Therefore, their local abundance data are used for take calculation instead of general animal density (see below).

*Basis for Threshold Calculation*

As discussed above, in-water pile removal and pile driving (vibratory and impact) generate loud noises that could potentially harass marine mammals in the vicinity of WSDOT's proposed Seattle Multimodal Project at Colman Dock.

Under the NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance), dual criteria are used to assess marine mammal auditory injury (Level A harassment) as a result of noise exposure (NMFS 2016). The dual criteria under the Guidance provide onset thresholds in instantaneous peak SPLs ($L_{pk}$) as well as 24-hr cumulative sound exposure levels ($SEL_{cum}$ or $L_E$) that could cause PTS to marine mammals of different hearing groups. The peak SPL is the highest positive value of the noise field, log transformed to dB in reference to 1 µPa.

$$L_{pk} = \max\left\{10\log_{10}\left(\frac{p(t)}{p_{ref}}\right)^2\right\} \quad (1)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, and $p_{ref}$ is reference acoustic pressure equal to 1 µPa.

The cumulative SEL is the total sound exposure over the entire duration of a given day's pile driving activity, specifically, pile driving occurring within a 24-hr period.

$$L_E = 10\log_{10}\left(\int_{t_1}^{t_2}\left(\frac{p(t)}{p_{ref}}\right)^2 dt\right) \quad (2)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, $p_{ref}$ is reference acoustic pressure equals to 1 µPa, $t_1$ marks the beginning of the time, and $t_2$ the end of time.

For onset of Level B harassment, NMFS continues to use the root-mean-square (rms) sound pressure level ($SPL_{rms}$) at 120 dB re 1 µPa and 160 dB re 1 µPa as the received levels from non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. The $SPL_{rms}$ for pulses (such as those from impact pile driving) should contain 90 percent of the pulse energy, and is calculated by

$$SPL_{rms} = 10\log_{10}\left(\frac{1}{T}\int_{t_1}^{t_2}\left(\frac{p(t)}{p_{ref}}\right)^2 dt\right) \quad (3)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, $p_{ref}$ is reference acoustic pressure equals to 1 µPa, $t_1$ marks the beginning of the time, and $t_2$ the end of time. In the case of an impulse noise, $t_1$ marks the time of 5 percent of the total energy window, and $t_2$ the time of 95 percent of the total energy window.

Table 3 summarizes the current NMFS marine mammal take criteria.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

| Hearing group | PTS onset thresholds | | Behavioral thresholds | |
|---|---|---|---|---|
| | Impulsive | Non-impulsive | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB | $L_{E,LF,24h}$: 199 dB. | | |
| Mid-Frequency (MF) Cetaceans | $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB | $L_{E,MF,24h}$: 198 dB. | | |
| High-Frequency (HF) Cetaceans | $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB | $L_{E,HF,24h}$: 173 dB | $L_{rms,flat}$: 160 dB | $L_{rms,flat}$: 120 dB. |
| Phocid Pinnipeds (PW) (Underwater) | $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB | $L_{E,PW,24h}$: 201 dB. | | |
| Otariid Pinnipeds (OW) (Underwater) | $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB | $L_{E,OW,24h}$: 219 dB. | | |

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

**Note:** Peak sound pressure ($L_{pk}$) has a reference value of 1 µPa, and cumulative sound exposure level ($L_E$) has a reference value of 1µPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

*Sound Levels and Acoustic Modeling for the Proposed Construction Activity*

Source Levels

The project includes vibratory removal of 14-in timber piles, vibratory driving and removal of 24-in steel piles, vibratory driving of 30- and 36-in steel piles, and impact pile driving of 30- and 36-in steel piles. In February of 2016, WSDOT conducted a test pile project at Colman Dock in order to gather data to select the appropriate piles for the project. The test pile project measured impact pile driving of 24- and 36-in steel piles. The measured results from the project are used here to provide source levels for the prediction of isopleths ensonified over thresholds for the Seattle project. The results show that the $SPL_{rms}$ for impact pile driving of 36-in steel pile is 189 dB re 1 µPa at 14 m from the pile (WSDOT 2016b). This value is also used for impact driving of the 30-in steel piles, which is a precautionary approach.

Source level of vibratory pile driving of 36-in steel piles is based on test pile driving at Port Townsend in 2010 (Laughlin 2011). Recordings of vibratory pile driving were made at a distance of 10 m from the pile. The results show that the $SPL_{rms}$ for vibratory pile driving of 36-in steel pile was 177 dB re 1 µPa (WSDOT 2016a).

Up to three pile installation crews may be active during the day within the project footprint. Each crew will use one vibratory and one impact hammer, and it is possible that more than 1 hammer, up to 3 impact and/or vibratory hammers, could be conducted concurrently for driving the 24-, 30-, and 36-in piles. Overlapping noise fields created by multiple hammer use are handled differently for impact and vibratory hammers. When more than one impact hammer is being used close

enough to another impact hammer, the cumulative acoustic energy is accounted for by including all hammer strikes. When more than one vibratory hammer is being used close enough to another vibratory hammer to create overlapping noise fields, additional sound levels are added to account for the overlap, creating a larger zone of influence (ZOI). A simplified nomogram method (Kinsler *et al.,* 2000) is proposed to account for the addition of noise source levels for multiple vibratory hammers, as shown in Table 4. Using this method, the source levels of 24-, 30-, and 36-in piles during vibratory pile driving are adjusted to 182 dB re 1 µPa (at 10 m).

TABLE 4—MULTIPLE SOUND LEVEL ADDITION

| When two sound levels differ by | Add the following to the higher level (dB) |
|---|---|
| 0–1 dB | 3 |
| 2–3 dB | 2 |
| 4–9 dB | 1 |
| >10 dB | 0 |

For vibratory pile removal, vibratory pile driving data were used as proxies because we conservatively consider noises from pile removal would be the same as those from pile driving.

The source level of vibratory removal of 14-in timber piles were based on measurements conducted at the Port Townsend Ferry Terminal during vibratory removal of a 12-in timber pile by WSDOT (Laughlin 2011). The recorded source level is 152 dB re 1 µPa at 16 m from the pile. In the absence of spectral data for timber pile vibratory driving, the weighting factor adjustment (WFA) recommended by NMFS acoustic guidance (NMFS 2016) was used to determine these zones.

These source levels are used to compute the Level A ensonified zones and to estimate the Level B harassment zones. For Level A harassment zones, zones calculated using cumulative SEL are all larger than those calculated using $SPL_{peak}$, therefore, only zones based on cumulative SEL for Level A harassment are used.

*Estimating Injury Zones*

Calculation and modeling of applicable ensonified zones are based on source measurements of comparable types and sizes of piles driven by different methods (impact vs. vibratory hammers) either during the Colman test pile driving or at a different location within the Puget Sound. As mentioned earlier, isopleths for injury zones are based on cumulative SEL ($L_E$) criteria.

For peak SPL ($L_{pk}$), distances to marine mammal injury thresholds were calculated using a simple geometric spreading model using a transmission loss coefficient of 15:

$$SL_{Measure} = EL + 15\log_{10}\left(R - D_{Measure}\right) \quad (4)$$

where $SL_{Measure}$ is the measured source level in dB re 1 µPa, $EL$ is the specific received level of threshold, $D_{Measure}$ is the distance (m) from the source where measurements were taken, and $R$ is the distance (radius) of the isopleth to the source in meters.

For cumulative SEL ($L_E$), distances to marine mammal exposure thresholds were computed using spectral modeling that incorporates frequency specific absorption. First, representative pile driving sounds recorded during test pile driving with impact and vibratory hammers were used to generate power spectral densities (PSDs), which describe the distribution of power into frequency components composing that sound, in 1-Hz bins. Parserval's theorem, which states that the sum of the square of a function is equal to the sum of the square of its transform, was applied to ensure that all energies within a strike (for impact pile driving) or a given period of time (for vibratory pile driving) were captured through the fast Fourier transform, an algorithm that converts the signal from its original domain (in this case, time series) to a representation in frequency domain. For impact pile driving, broadband PSDs were generated from $SPL_{rms}$ time series of a total of 270 strikes with a time window that contains 90 percent of pulse energy. For vibratory pile driving, broadband PSDs were generated from a series of continuous 1-second SEL. Broadband PSDs were then adjusted based on weighting functions of marine mammal hearing groups (Finneran 2016) by using the weighting function as a band-pass filter. For impact pile driving, cumulative exposures ($E_{sum}$) were computed by multiplying the single rms pressure squared by rms pulse duration for the specific strike, then by the number of strikes (provided in Table 1) required to drive one pile, then by the number of piles to be driven in a given day, as shown in the equation below:

$$E_{sum} = \sum_{i=1}^{N} p_{rms,i}^{2} \tau_i N_s \quad (5)$$

where $p_{rms,i}$ is the rms pressure, $\tau$ is the rms pulse duration for the specific strike, $N_s$ is the anticipated number of strikes (provided in Table 1) needed to install one pile, and $N$ is the number of total piles to be installed.

For vibratory pile driving, cumulative exposures were computed by summing 1-second noise exposure by the duration needed to drive on pile (provided in Table 1), then by the number of piles to be driven in a given day, as shown in the equation below:

$$E_{sum} = \sum_{i=1}^{N} E_{1s,i} \Delta t_i \quad (6)$$

where $E_{1s}$ is the 1-second noise exposure, and $\Delta t$ is the duration (provided in Table 1) need to install 1 pile by vibratory piling.

Frequency-specific transmission losses, *TL*(*f*), were then computed using practical spreading along with frequency-specific absorption coefficients that were computed with nominal seawater properties (*i.e.,* salinity = 35 psu, pH = 8.0) at 15°C at the surface by

$$TL(f) = 15\log_{10}(R) + \alpha(f)R/1000 \quad (7)$$

where $a(f)$ is dB/km, and $R$ is the distance (radius) of the specific isopleth to the source in meters. For broadband sources such as those from pile driving, the transmission loss is the summation of the frequency-specific results.

Approach to Estimate Behavioral Zones

As mentioned earlier, isopleths to Level B behavioral zones are based on root-mean-square SPL ($SPL_{rms}$) that are specific for impulse (impact pile driving) and non-impulse (vibratory pile driving) sources. Distances to marine mammal behavior thresholds were calculated using a simple geometric spreading equation as shown in Equation (4).

For Level B harassment zones from vibratory pile driving of 30-in and 36-in piles, the ensonified zones are calculated based on practical spreading of back-calculated source level of 36-in pile driving adjusted for 3 hammers operating concurrently by adding 5 dB. The results show that the 120 dB re 1 µPa isopleth is at 13.6 km. For Level B harassment zone from vibratory pile driving of 24-in and 36-in piles, WSDOT conducted site measurements during Seattle test pile driving project using 24-in and 36-in steel piles. The results show that underwater noise cannot be detected at a distance of 5 km (3 mi) and 6.88 km (4.3 mi) for the 24-in and 36-in steel piles, respectively. Since this measurement was based on pile driving using 1 hammer, the Level B harassment zone for 24- and 36-in steel pile is adjusted by factoring in a 5 dB difference (see above) using the following equation, based on the inverse law of acoustic propagation (*i.e.,* dB difference in transmission loss is the inverse of distance difference in logarithm):

$$\left|dB_{difference}\right| = 15 \times \log_{10}\left(\frac{R_{3\text{-hammer}}}{R_{1\text{-hammer}}}\right) \quad (8)$$

where $dB_{difference}$ is the 5 dB difference, $R_{3\text{-hammer}}$ is the distance from the pile where piling noise is no longer audible, and $R_{1\text{-hammer}}$ is the measured distance from the pile where piling noise is no longer audible, which is 5 km for the 24-in steel pile and 6.88 km for the 36-in steel pile.

The result show that when using 3 vibratory hammers concurrently, the distance from the pile to where pile noise is no longer audible is 11 km for the 24-in steel pile and 14.8 km for the 36-in steel pile. Since the landmass intercepts the water at 13.6 km, this distance is used as the Level B harassment distance for the 36-in steel pile.

A summary of the measured and modeled harassment zones is provided in Table 5.

TABLE 5—DISTANCES TO HARASSMENT ZONES

| Pile type, size & pile driving method | Injury zone (m) | | | | | Behavior zone (m) |
|---|---|---|---|---|---|---|
| | LF cetacean | MF cetacean | HF cetacean | Phocid | Otariid | |
| Vibratory 14″ timber | 8 | 0.7 | 11.9 | 4.9 | 0.3 | 2,175 |
| Vibratory 24″ steel | 255 | 65 | 1,365 | 115 | 10 | 11,000 |
| Vibratory 30″ & 36″ steel | 285 | 65 | 1,455 | 125 | 10 | 13,600 |
| Impact 30″ & 36″ steel | 1,845 | 75 | 2,835 | 465 | 35 | 1,200 |

*Estimated Takes From Proposed Construction Activity*

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a Level A or Level B harassment zone during active pile driving or removal. The Level A calculation includes a duration component, along with an assumption (which can lead to overestimates in some cases) that animals within the zone stay in that area for the whole duration of the pile driving activity within a day. For all marine mammal species except harbor seals and California sea lions, estimated takes are calculated based on ensonified area for a specific pile driving activity multiplied by the marine mammal density in the action area, multiplied by the number of pile driving (or removal) days. Marine mammal density data for all animals except harbor porpoise are from the U.S. Navy Marine Species Density Database (Navy 2015). Harbor porpoise density is based on a recent study by Jefferson *et al.* (2016) for the Seattle area near the Colman Dock. Harbor seal and California sea lion takes are based on observations near Seattle, since these data provide the best information on distribution and presence of these species that are often associated with nearby haulouts (see below). A summary of marine mammal density, days and Level A and Level B harassment areas from different pile driving and removal activities is provided in Table 6.

TABLE 6—SUMMARY OF MARINE MAMMAL DENSITY, DAYS AND LEVEL A AND LEVEL B ENSONIFIED AREAS FROM DIFFERENT PILE DRIVING AND REMOVAL ACTIVITIES

| Species | Density (km-2) | Vibratory 14-in timber | Vibratory 24-in steel | Vibratory 30-in steel | Vibratory 36-in steel | Impact 30-in steel | Impact 36-in steel |
|---|---|---|---|---|---|---|---|
| **Days** | | 11 | 15 | 3 | 26 | 2 | 26 |
| **Level A Areas ($m^2$)** | | | | | | | |
| Pacific harbor seal | 1.219000 | 50 | 41,548 | 49,087 | 49,087 | 394,075 | 394,075 |
| California sea lion | 0.12660 | 0.126 | 314 | 314 | 314 | 3,849 | 3,849 |
| Steller sea lion | 0.036800 | 0.126 | 314 | 314 | 314 | 3,849 | 3,849 |
| Killer whale, transient | 0.002373 | 50 | 13,273 | 13,273 | 13,273 | 17,672 | 17,672 |
| Killer whale, Southern Resident | 0.020240 | 50 | 13,273 | 13,273 | 13,273 | 17,672 | 17,672 |
| Gray whale | 0.000510 | 154 | 153,311 | 189,384 | 189,384 | 4,129,836 | 4,129,836 |
| Humpback whale | 0.00070 | 154 | 153,311 | 189,384 | 189,384 | 4,129,836 | 4,129,836 |
| Harbor porpoise | 0.156000 | 13,273 | 2,547,906 | 2,678,940 | 2,678,940 | 8,190,639 | 8,190,639 |
| Dall's porpoise | 0.047976 | 13,273 | 2,547,906 | 2,678,940 | 2,678,940 | 8,190,639 | 8,190,639 |
| **Level B Areas ($m^2$)** | | | | | | | |
| Pacific harbor seal | 1.219000 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |
| California sea lion | 0.12660 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |
| Steller sea lion | 0.036800 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |
| Killer whale, transient | 0.020240 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |
| Killer whale, Southern Resident | 0.002373 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |
| Gray whale | 0.000510 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |
| Humpback whale | 0.00070 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |
| Harbor porpoise | 0.69 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |
| Dall's porpoise | 0.047976 | 5,419,792 | 58,338,838 | 74,290,934 | 74,290,934 | 1,926,124 | 1,926,124 |

The Level A take total was further adjusted by subtracting animals expected to occur within the exclusion zone, where pile driving activities are suspended when an animal is observed in or approaching the zone (see Mitigation section). Further, the number of Level B takes was adjusted to exclude those already counted for Level A takes.

The harbor seal take estimate is based on local seal abundance information off the Seattle area from WSDOT's Seattle Colman test pile project in 2016. Marine mammal visual monitoring during the 10-day period of the project indicates that a maximum of 13 harbor seals were observed in the general area of the Colman Dock project (WSDOT 2012). Based on a total of 83 pile-driving days for the WSDOT Seattle Colman Dock project, it is estimated that up to 1,079 harbor seals could be exposed to noise levels associated with ''take.'' Since 28 days would involve impact pile driving of 30-in and 36-in steel piles with Level A zones beyond shutdown zones (465 m vs 160 m shutdown zone), we consider that 364 harbor seals exposed during these 28 days would experience Level A harassment.

The California sea lion take estimate is based on local sea lion abundance information from the Seattle's Elliott Bay Sea Wall Project (City of Seattle 2014). Marine mammal visual monitoring during the Sea Wall Project indicates that up to 47 sea lions were observed in the general area of the Colman Dock project at any given time (City of Seattle 2014). Based on a total of 83 pile driving days for the WSDOT Seattle Colman Dock project, it is estimated that up to 3,901 California sea lions could be exposed to noise levels associated with ''take''. Since the Level A zones of otariids are all very small (<35m, Table 5), we do not consider it likely that any sea lions would be taken by Level A harassment. Therefore, all California sea lion takes estimated here are expected to be taken by Level B harassment.

A summary of estimated marine mammal takes is listed in Table 7.

TABLE 7—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED NOISE LEVELS THAT CAUSE LEVEL A OR LEVEL B HARASSMENT

| Species | Estimated Level A take | Estimated Level B take | Estimated total take | Abundance | Percentage |
|---|---|---|---|---|---|
| Pacific harbor seal | 364 | 715 | 1,079 | 11,036 | 9.77 |
| California sea lion | 0 | 3,901 | 3,901 | 296,750 | 1.31 |
| Steller sea lion | 0 | 116 | 116 | 71,562 | 0.16 |
| Killer whale, transient | 0 | 7 | 7 | 243 | 3 |
| Killer whale, Southern Resident | 0 | 0 | 0 | 78 | 0 |
| Gray whale | 1 | 15 | 16 | 20,990 | 0.08 |
| Humpback whale | 0 | 0 | 0 | 1,918 | 0 |
| Harbor porpoise | 233 | 2,056 | 2,289 | 11,233 | 20.37 |
| Dall's porpoise | 16 | 137 | 153 | 25,750 | 0.59 |

**Mitigation**

Under section 101(a)(5)(D) of the MMPA, NMFS shall prescribe the ''permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses.''

To ensure that the ''least practicable adverse impact'' will be achieved, NMFS evaluates mitigation measures in consideration of the following factors in relation to one another: The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, their habitat, and their availability for subsistence uses (latter where relevant); the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation.

For WSDOT's proposed Seattle Multimodal Project at Colman Dock, WSDOT worked with NMFS and prescribed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, to monitor marine mammals within designated ZOIs and exclusion zones corresponding to NMFS' current Level B and Level A harassment thresholds and, to implement shut-down measures for certain marine mammal species when they are detected approaching the exclusion zones or actual take numbers are approaching the authorized take numbers.

*Time Restriction*

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between August 1, 2017, and February 15, 2018.

*Use of Noise Attenuation Devices*

To reduce impact on marine mammals, WSDOT shall use a marine pile driving energy attenuator (*i.e.,* air bubble curtain system), or other equally effective sound attenuation method (*e.g.,* dewatered cofferdam) for all impact pile driving.

*Establishing and Monitoring Level A, Level B Harassment Zones, and Exclusion Zones*

Before the commencement of in-water construction activities, which include impact pile driving and vibratory pile driving and pile removal, WSDOT shall establish Level A harassment zones where received underwater SPLs or $SEL_{cum}$ could cause PTS (see above).

WSDOT shall also establish Level B harassment zones where received underwater SPLs are higher than 160 $dB_{rms}$ and 120 $dB_{rms}$ re 1 µPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and pile removal), respectively.

WSDOT shall establish a maximum 160-m Level A exclusion zone for all marine mammals. For Level A harassment zones that are smaller than 160 m from the source, WSDOT shall establish exclusion zones that correspond to the estimated Level A harassment distances, but shall not be less than 10 m.

A summary of exclusion zones is provided in Tables 8a and 8b.

TABLE 8a—EXCLUSION ZONES FOR VARIOUS PILE DRIVING ACTIVITIES AND MARINE MAMMAL HEARING GROUPS (FOR NON-ESA-LISTED SPECIES)

| Pile type, size & pile driving method | Exclusion zone (m) | | | | |
|---|---|---|---|---|---|
| | LF cetacean | MF cetacean | HF cetacean | Phocid | Otariid |
| 14″ timber pile, vibratory | 10 | 10 | 12 | 10 | 10 |
| 24″ steel pile, vibratory | 255 | 65 | 160 | 115 | 10 |
| 30″ & 36″ steel pile, vibratory | 285 | 65 | 160 | 125 | 10 |
| 30″ & 36″ steel pile, impact | 500 | 75 | 160 | 160 | 35 |

TABLE 8b—EXCLUSION ZONES FOR VARIOUS PILE DRIVING ACTIVITIES AND ESA-LISTED MARINE MAMMAL SPECIES

| Pile type, size & pile driving method | Exclusion zone (m) | |
|---|---|---|
| | Humpback whale | Southern resident killer whale |
| 14″ timber pile, vibratory | 2,175 | 2,175 |
| 24″ steel pile, vibratory | 11,000 | 11,000 |
| 30″ & 36″ steel pile, vibratory | 13,600 | 13,600 |
| 30″ & 36″ steel pile, impact | 1,845 | 1,200 |

NMFS-approved protected species observers (PSO) shall conduct an initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 30 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 30 minutes have elapsed since the last sighting.

*Soft Start*

A ''soft-start'' technique is intended to allow marine mammals to vacate the area before the impact pile driver reaches full power. Whenever there has been downtime of 30 minutes or more without impact pile driving, the contractor will initiate the driving with ramp-up procedures described below.

Soft start for impact hammers requires contractors to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Each day, WSDOT will use the soft-start technique at the beginning of impact pile driving, or if pile driving has ceased for more than 30 minutes.

*Shutdown Measures*

WSDOT shall implement shutdown measures if a marine mammal is detected within an exclusion zone or is about to enter an exclusion zone listed in Tables 8a and 8b.

WSDOT shall also implement shutdown measures if southern resident killer whales or humpback whales are sighted within the vicinity of the project area and are approaching the Level B harassment zone (ZOI) during in-water construction activities.

If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a Southern Resident killer whale or a transient killer whale, it shall be assumed to be a Southern Resident killer whale and WSDOT shall implement the shutdown measure.

If a Southern Resident killer whale, an unidentified killer whale, or a humpback whale enters the ZOI undetected, in-water pile driving or pile removal shall be suspended until the whale exits the ZOI to avoid further Level B harassment.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

*Coordination With Local Marine Mammal Research Network*

Prior to the start of pile driving for the day, the Orca Network and/or Center for Whale Research will be contacted by WSDOT to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSDOT will be able to get real-time information on the presence or absence of whales before starting any pile driving.

Based on our evaluation of the mitigation measures described above, NMFS has determined that the prescribed mitigation measures provide the means effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical to both compliance and ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the action area (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

*Monitoring Measures*

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its Seattle Multimodal Project. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;

2. At least one observer must have prior experience working as an observer;

3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;

4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

5. NMFS will require submission and approval of observer CVs.

Monitoring of marine mammals around the construction site shall be

conducted using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). Due to the different sizes of ZOIs from different pile sizes, several different ZOIs and different monitoring protocols corresponding to a specific pile size will be established.

- During 14-in timber pile removal, two land-based PSOs will monitor the exclusion zones and Level B harassment zone.
- During impact pile driving of 30-in and 36-in steel piles, 4 land-based PSOs will monitor the Level A and Level B harassment zones.
- During vibratory pile driving of 24-in, 30-in, and 36-in steel piles, 5 land-based PSOs and two vessel-based PSOs on ferries will monitor the Level A and Level B harassment zones.
- If the sound source verification (SSV) measurements show that Level B harassment distance for the vibratory pile driving of 24-in, 30-in, and 36-in steel piles is less than 10 km, monitoring efforts listed above can be reduced to 4 land-based PSOs and one vessel-based PSO on a ferry.
- If the sound source verification (SSV) measurements show that Level B harassment distance for the vibratory pile driving of 24-in, 30-in, and 36-in steel piles is less than 10 km, 4 land-based PSOs and one vessel-based PSO on a ferry will monitor the Level A and level B harassment zones.

Locations of the land-based PSOs and routes of monitoring vessels are shown in WSDOT's Marine Mammal Monitoring Plan, which is available online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

To verify the required monitoring distance, the exclusion zones and ZOIs will be determined by using a range finder or hand-held global positioning system device.

In addition, WSDOT shall conduct SSV measurements when conduction vibratory pile driving of 24-in, 30-in, and 36-in steel piles using more than one hammer.

*Reporting Measures*

WSDOT will be required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA, whichever comes earlier. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT would address the comments and submit a final report to NMFS within 30 days after receiving NMFS' comments.

In addition, NMFS would require WSDOT to notify NMFS' Office of Protected Resources and NMFS' West Coast Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. WSDOT shall provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WSDOT finds an injured or dead marine mammal that is not in the construction area, WSDOT would report the same information as listed above to NMFS within 48 hours of sighting.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration, etc.), as well as effects on habitat, the status of the affected stocks, and the likely effectiveness of the mitigation. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 7, given that the anticipated effects of WSDOT's Seattle Multimodal Project at Colman Dock activities involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

Although a few marine mammal species (364 harbor seals, 1 gray whale, 233 harbor porpoises, and 16 Dall's porpoise) are estimated to experience Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kHz. Therefore, the degree of PTS is not likely to affect the echolocation performance of the two porpoise species, which use frequencies mostly above 100 kHz. Nevertheless, for all marine mammal species, it is known that in general animals avoid areas where sound levels could cause hearing impairment. Therefore, it is not likely that an animal would stay in an area with intense noise that could cause severe levels of hearing damage. In addition, even if an animal receives a TTS, the TTS would be a one-time event from the exposure, making it unlikely that the TTS would evolve into PTS. Furthermore, Level A take estimates are based on the assumption that the animals are randomly distributed in the project area and would not avoid intense noise levels that could cause TTS or PTS. In reality, animals tend to avoid areas where noise levels are high (Richardson *et al.* 1995).

For these species and the rest of the three marine mammal species, takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral and TTS). Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal and the implosion noise. A few marine mammals could experience TTS if they occur within the Level B TTS ZOI. However, as discussed earlier in this document, TTS is a

temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Therefore, it is not considered an injury.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section. There is no ESA designated critical area in the vicinity of the Seattle Multimodal Project at Colman Dock area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, WSDOT's proposed construction activity at Colman Dock would not adversely affect marine mammal habitat.

- Injury—only 4 species of marine mammals would experience Level A affects in the form of mild PTS, which is expected to be of small degree.
- Behavioral disturbance—seven species/stocks of marine mammals would experience behavioral disturbance and TTS from the WSDOT's Seattle Colman Dock project. However, as discussed earlier, the area to be affected is small and the duration of the project is short. Therefore, the overall impacts are expected to be insignificant.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals anticipated to be taken to the most appropriate estimation of the relevant species or stock size in our determination of whether an authorization would be limited to small numbers of marine mammals.

The takes represent less than 21 percent of all populations or stocks with known abundance potentially impacted (see Table 7 in this document). These take estimates represent the percentage of each species or stock that could be taken by both Level A and Level B harassments. In general, the numbers of marine mammals estimated to be taken are small proportions of the total populations of the affected species or stocks.

Based on the analysis contained herein of the proposed activity (including the precribed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of each species or stock will be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Subsistence Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act (ESA)**

Issuance of an MMPA authorization requires compliance with the ESA for any species that are listed or proposed as threatened or endangered.

The MMPA California-Oregon-Washington stock of humpback whale and the Southern Resident stock of killer whale are the only marine mammal species listed under the ESA that could occur in the vicinity of WSDOT's proposed construction projects. Two DPSs of humpback whales, the Mexico DPS and the Central America DPS, are listed as threatened and endangered under the ESA, respectively. NMFS worked with WSDOT to implement shutdown measures in the IHA that would avoid takes of both SR killer whale and humpback whales. Therefore, NMFS determined that no ESA-listed marine mammal species would be affected as a result of WSDOT's Seattle Colman Dock construction project.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to the Washington State Department of Transportation for conducting ferry terminal construction at Colman Dock in Seattle Washington, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 3, 2017.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2017–14261 Filed 7–6–17; 8:45 am]

**BILLING CODE 3510–22–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2017–0327; FRL–9963–57]**

## Scopes of the Risk Evaluations To Be Conducted for the First Ten Chemical Substances Under the Toxic Substances Control Act; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** As required by the Toxic Substances Control Act (TSCA), which was amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act in June 2016, EPA is announcing the availability of the scope documents for the risk evaluations to be conducted for the first ten (10) chemical substances. Each scope includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations the EPA expects to consider in conducting the risk evaluation. EPA is also re-opening existing dockets for the first 10 chemicals to allow for the public to provide additional data or information that could be useful to the Agency in conducting problem formulation, the next step in the process of conducting the risk evaluations for these chemicals.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Christina Motilall, Risk Assessment Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1287; email address: *motilall.christina@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 (defined under TSCA to include import), process, distribute in commerce, use or dispose of any of the ten chemical substances identified in this document for risk evaluation. This action may be of particular interest to entities that are regulated under TSCA (*e.g.,* entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110, among others). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

*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–OPPT–2017–0327, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

*C. What is the Agency's authority for taking this action?*

This action directly implements TSCA section 6(b)(4)(D).

## II. Background

EPA published a notice in the **Federal Register** of December 19, 2016 (81 FR 91927) (FRL–9956–47) of EPA's designation of 10 chemical substances for initial risk evaluations under TSCA. EPA's designation of the first ten chemical substances constituted the initiation of the risk evaluation process for each of these chemical substances, pursuant to the requirements of TSCA section 6(b)(4).

## III. What action is the Agency taking?

In fulfillment of the requirements in TSCA section 6(b)(4)(D), EPA is publishing the scopes of the risk evaluations for the first 10 chemical substances designated to undergo risk evaluation to determine whether the chemical substances present an unreasonable risk of injury to human health or the environment under TSCA section 6(b)(4). The 10 chemical substances for which EPA is publishing the scopes of the risk evaluations are:

| Chemical name | Docket ID No. | Agency contact |
|---|---|---|
| Asbestos | EPA–HQ–OPPT–2016–0736 | Robert Courtnage, *courtnage.robert@epa.gov,* 202–566–1081. |
| 1-Bromopropane | EPA–HQ–OPPT–2016–0741 | Ana Corado, *corado.ana@epa.gov,* 202–564–0140. |
| 1,4-Dioxane | EPA–HQ–OPPT–2016–0723 | Cindy Wheeler, *wheeler.cindy@epa.gov,* 202–566–0484. |
| Carbon Tetrachloride | EPA–HQ–OPPT–2016–0733 | Stephanie Jarmul, *jarmul.stephanie@epa.gov,* 202–564–6130. |
| Cyclic Aliphatic Bromide Cluster (HBCD) | EPA–HQ–OPPT–2016–0735 | Sue Slotnick, *slotnick.sue@epa.gov,* 202–566–1973. |
| Methylene Chloride | EPA–HQ–OPPT–2016–0742 | Ana Corado, *corado.ana@epa.gov,* 202–564–0140. |
| N-Methylpyrrolidone (NMP) | EPA–HQ–OPPT–2016–0743 | Ana Corado, *corado.ana@epa.gov,* 202–564–0140. |
| Pigment Violet 29 (Anthra[2,1,9-def:6,5,10-d′e′f′] diisoquinoline-1,3,8,10(2H,9H)-tetrone). | EPA–HQ–OPPT–2016–0725 | Hannah Braun, *braun.hannah@epa.gov,* 202–564–5614. |
| Tetrachloroethylene (also known as perchloroethylene) | EPA–HQ–OPPT–2016–0732 | Tyler Lloyd, *lloyd.tyler@epa.gov,* 202–564–4016. |
| Trichloroethylene (TCE) | EPA–HQ–OPPT–2016–0737 | Toni Krasnic, *krasnic.toni@epa.gov,* 202–564–0984. |

The scope of the risk evaluation for each of these 10 chemical substances includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations the EPA expects to consider. To the extent possible, EPA has aligned these scope documents with the approach set forth in the risk evaluation process. The timeframe for development of these scope documents has been very compressed. The first 10 chemical substances were not subject to prioritization, the process through which EPA expects to collect and screen much of the relevant information about chemical substances that will be subject to the risk evaluation process. As a result, EPA had limited ability to process all the information gathered during scoping for the first 10 chemicals within the time provided in the statute for publication of the scopes after initiation of the risk evaluation process.

Hence, the scope documents for the first 10 chemicals are not as refined or specific as future scope documents are anticipated to be. In addition, there was insufficient time for EPA to provide an opportunity for comment on drafts of these scope documents, as it intends to do for future scope documents. For these reasons, EPA will publish and take public comment on a Problem Formulation document which will refine the current scope, as an additional interim step, prior to publication of the draft risk evaluations for the first 10 chemicals. The problem formulation documents are expected to be released within approximately 6 months of publication of the scope document. EPA invites the public to provide additional data or information that would be useful in conducting the problem formulation to the existing public docket for each of these chemicals.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: June 22, 2017.

**E. Scott Pruitt,**

*Administrator.*

[FR Doc. 2017–14321 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9964–12-Region 2]**

## Proposed CERCLA Sections 104, 106, 107, and 122 Bona Fide Prospective Purchaser Settlement for Removal Action for the Alfred Heller Heat Treating Superfund Site, City of Clifton, Passaic County, New Jersey

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed bona fide prospective purchaser settlement agreement pursuant to Sections 104, 106, 107, and 122 of CERCLA, with 356 Getty Avenue, LLC for the Alfred Heller Heat Treating Superfund Site (''Site''), located in the City of Clifton, Passaic County, New Jersey. 356 Getty Avenue, LLC agrees to perform a CERCLA removal action at the Site and pay EPA $25,000 for EPA's future oversight costs at or in connection with the Site.

The settlement includes a covenant by EPA not to sue or to take administrative action against 356 Getty Avenue, LLC pursuant to Sections 106 and 107(a) of CERCLA, for Existing Contamination, a defined term under the settlement agreement, at the Site. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, New York, New York 10007–1866.

**DATES:** Comments must be submitted on or before August 7, 2017.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA Region 2 offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Alfred Heller Heat Treating Superfund Site, City of Clifton, Passaic County, New Jersey, Index No. II–CERCLA–02–2017–2008. To request a copy of the proposed settlement agreement, please contact the EPA employee identified below.

**FOR FURTHER INFORMATION CONTACT:** Deborah Schwenk, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866. Email: *schwenk.deborah@epa.gov.* Telephone: 212–637–3149.

Dated: May 2, 2017.

**Eric J. Wilson,**

*Acting Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2.*

[FR Doc. 2017–14344 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9964–75–OA]**

### Notification of a Closed Meeting of the Science Advisory Board's 2017 Scientific and Technological Achievement Awards Committee and Closed Meeting of the Science Advisory Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency's (EPA) Science Advisory Board (SAB) Staff Office announces a meeting of the SAB's 2017 Scientific and Technological Achievement Awards (STAA) Committee and a meeting of the chartered SAB to develop and review recommendations for recognition under the Agency's 2017 STAA program. These meetings are closed to the public.

**DATES:** The STAA Committee meeting will be held Wednesday, July 19, 2017, from 8:00 a.m. to 6:00 p.m. and Thursday, July 20, 2017, from 8:00 a.m. to 3:00 p.m. (Eastern Time). The chartered SAB meeting will be held Friday, September 15, 2017, from 10:00 a.m. to 11:30 a.m. (Eastern Time). The meetings will be closed to the public.

**ADDRESSES:** The STAA Committee meeting will be held at the Melrose Georgetown Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037. The chartered SAB meeting will be held in the Washington, DC metro area, and an agenda with the final location will be posted on the SAB Web site at *http://www.epa.gov/sab.*

**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to obtain further information regarding the STAA Committee meeting may contact Edward Hanlon, Designated Federal Officer, by telephone: (202) 564–2134 or email at *hanlon.edward@epa.gov.* Members of the public who wish to obtain further information regarding the chartered SAB meeting may contact Thomas Carpenter, Designated Federal Officer, by telephone: (202) 564–4885 or email at *carpenter.thomas@epa.gov.* The SAB Mailing address is EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information about the SAB as well as updates concerning the SAB meeting announced in this notice may be found on the SAB Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB 2017 STAA Committee will hold a closed meeting to develop recommendations for recipients of the Agency's 2017 STAA program achievement awards and recommendations for improvement of the Agency's STAA program, and the chartered SAB will hold a closed meeting to conduct a review of the SAB 2017 STAA Committee's draft advisory report. Under normal circumstances, a notice of the Committee meeting must be published no later than 15 days before the date of that meeting. Due to unavoidable administrative circumstances, we are publishing this notice with less than 15 days' advance notice for the STAA Committee meeting on July 19 and 20, 2017.

The STAA awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In conducting its review, the SAB considers each nomination in relation to the following four award levels:

- Level I awards are for those who have accomplished an exceptionally high-quality research or technological effort. The awards recognize the creation or general revision of scientific or technological principle or procedure, or a highly significant improvement in the value of a device, activity, program, or service to the public. Awarded research is of national significance or has high impact on a broad area of science/technology. The research has far reaching consequences and is recognizable as a major scientific/technological achievement within its discipline or field of study.
- Level II awards are for those who have accomplished a notably excellent research or technological effort that has qualities and values similar to, but to a lesser degree, than those described under Level I. Awarded research has timely consequences and contributes as

an important scientific/technological achievement within its discipline or field of study.

• Level III awards are for those who have accomplished an unusually notable research or technological effort. The awards are for a substantial revision or modification of a scientific/technological principle or procedure, or an important improvement to the value of a device, activity, program, or service to the public. Awarded research relates to a mission or organizational component of the EPA, or significantly affects a relevant area of science/technology.

• Honorable Mention awards acknowledge research efforts that are noteworthy but do not warrant a Level I, II or III award. Honorable Mention applies to research that: (1) May not quite reach the level described for a Level III award; (2) show a promising area of research that the Subcommittee wants to encourage; or (3) show an area of research that the Subcommittees feels is too preliminary to warrant an award recommendation at this time.

The SAB reviews the STAA nomination packages according to the following five evaluation factors:

• The extent to which the work reported in the nominated publication(s) resulted in either new or significantly revised knowledge. The accomplishment is expected to represent an important advancement of scientific knowledge or technology relevant to environmental issues and EPA's mission.

• The extent to which environmental protection has been strengthened or improved, whether of local, national, or international importance.

• The degree to which the research is a product of the originality, creativeness, initiative, and problem-solving ability of the researchers, as well as the level of effort required to produce the results.

• The extent of the beneficial impact of the research and the degree to which the research has been favorably recognized from outside EPA.

• The nature and extent of peer review, including stature and quality of the peer-reviewed journal or the publisher of a book for a review chapter published therein.

I have determined that the meetings of the STAA Committee and chartered SAB will be closed to the public because they are concerned with selecting employees deserving of awards. In making these recommendations, the Agency requires full and frank advice from the SAB. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature and the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, are protected from disclosure by section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and sections (c)(2) and (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). Minutes of the meetings of the STAA Committee and chartered SAB will be kept and certified by the chair of those meetings.

Dated: June 30, 2017.

**E. Scott Pruitt,**

*Administrator.*

[FR Doc. 2017–14338 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[9961–59–OEI]**

## Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of West Virginia

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of the State of West Virginia's request to revise its National Primary Drinking Water Regulations Implementation EPA-authorized program to allow electronic reporting.

**DATES:** EPA's approval is effective August 7, 2017 for the State of West Virginia's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency.

**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 June 1, 2017, the West Virginia Department of Health and Human Resources (WV DHHR) submitted an application titled ''Compliance Monitoring Data Portal'' for revision to its EPA-approved drinking water program under title 40 CFR to allow new electronic reporting. EPA reviewed WV DHHR's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision 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 West Virginia's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting under 40 CFR part 141 is being published in the **Federal Register**.

WV DHHR was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of West Virginia's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of West Virginia's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

**Matthew Leopard,**

*Director, Office of Information Management.*

[FR Doc. 2017–14208 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2013–0677; FRL–9963–59]**

### Receipt of Information Under the Toxic Substances Control Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing its receipt of information submitted pursuant to a rule, order, or consent agreement issued under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which information has been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the information received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8173; email address: *schaeffer.john@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. Chemical Substances and/or Mixtures

Information received about the following chemical substance and/or mixtures is provided in Unit IV.: *Propanoic acid, 2-methyl-, 3-(benzoyloxy)-2,2,4-trimethylpentyl ester (CASRN 22527–63–5)*.

#### II. Authority

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of information submitted pursuant to a rule, order, or consent agreement promulgated under TSCA section 4 (15 U.S.C. 2603).

#### III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2013–0677, has been established for this **Federal Register** document, which announces the receipt of the information. Upon EPA's completion of its quality assurance review, the information received will be added to the docket identified in Unit IV., which represents the docket used for the TSCA section 4 rule, order, and/or consent agreement. In addition, once completed, EPA reviews of the information received will be added to the same docket. Use the docket ID number provided in Unit IV. to access the information received and any available EPA review.

EPA's dockets are available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

#### IV. Information Received

As specified by TSCA section 4(d), this unit identifies the information received by EPA: *Propanoic acid, 2-methyl-, 3-(benzoyloxy)-2,2,4-trimethylpentyl ester (CASRN 22527–63–5)*.

1. *Chemical Use:* Plasticizer in rubber and plastic products.

2. *Applicable Rule, Order, or Consent Agreement:* Chemical testing requirements for third group of high production volume chemicals (HPV3), 40 CFR 799.5089.

3. *Information Received:* The following listing describes the nature of the information received. The information will be added to the docket for the applicable TSCA section 4 rule, order, or consent agreement and can be found by referencing the docket ID number provided. EPA reviews of information will be added to the same docket upon completion.

*Daphnia magna Reproduction Test.* The docket ID number assigned to this information is EPA–HQ–OPPT–2009–0112.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: June 7, 2017.

**Maria J. Doa,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2017–14320 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–9963–31]**

### Access to Confidential Business Information by Syracuse Research Corporation and Its Identified Subcontractors

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor and subcontractors, Syracuse Research Corporation (SRC) of North Syracuse, New York; BeakerTree Corporation of Arlington, VA; Essential Software, Inc. of Potomac, MD; and Versar, Inc. of Springfield, VA, to access information which has been submitted to EPA under sections 4, 5, 6, 8, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur no sooner than July 14, 2017.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Scott M. Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@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?*

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*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–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

## II. What action is the Agency taking?

Under EPA contract number EP–W–17–008, contractor and subcontractors SRC of 7502 Round Pond Road, North Syracuse, NY; BeakerTree Corporation of 2451 Crystal Drive, Suite 475, Arlington, VA; Essential Software, Inc. of 9024 Mistwood Drive, Potomac, MD; and Versar, Inc. of 6850 Versar Center, Springfield, VA will assist the Office of Pollution Prevention and Toxics (OPPT) by providing support in scientific health and environmental assessments; risk management evaluations; and document processing for new and existing chemicals and products of biotechnology and nanotechnology under TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP–W–17–008, SRC and its subcontractors will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA to perform successfully the duties specified under the contract. SRC and its subcontractors will be given access to information submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 21 of TSCA that EPA may provide SRC and its subcontractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and SRC's sites located in Arlington, VA and North Syracuse, NY in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until March 12, 2022. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

SRC and its subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: June 5, 2017.

**Pamela S. Myrick,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2017–14324 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9034–1]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)
Filed 06/26/2017 Through 06/30/2017
Pursuant to 40 CFR 1506.9.

### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

*EIS No. 20170117, Final Supplement, FHWA, AK,* Gravina Access Project, Review Period Ends: 08/06/2017, Contact: Karen Pinell 907–586–7158.

*EIS No. 20170118, Draft, BLM, WY,* Normally Pressured Lance Natural Gas Development Project, Comment Period Ends: 08/21/2017, Contact: Susan (Liz) Daily 307–367–5310.

*EIS No. 20170119, Draft, AFS, CA,* Mammoth Base Area Land Exchange, Comment Period Ends: 08/21/2017, Contact: Janelle Walker 760–924–5523.

*EIS No. 20170120, Draft, USFS, CA,* Highway 89 Safety Enhancement and Forest Ecosystem Restoration Project, Comment Period Ends: 08/21/2017, Contact: Ann Glubczynski 530–964–2184.

*EIS No. 20170121, Final Supplement, USN, NAT,* Surveillance Towed Array Sensor System (SURTASS LFA) Sonar, Review Period Ends: 08/07/2017, Contact: CDR Patrick Havel 703–695–8266.

*EIS No. 20170122, Draft Supplement, USFS, CO,* Rico West Dolores Roads and Trails Travel Management Project, Comment Period Ends: 08/21/2017, Contact: Deborah Kill 970–882–6822.

*EIS No. 20170123, Draft, USFS, OR,* Lobert Restoration Project, Comment Period Ends: 08/21/2017, Contact: Kyle Gomez 541–883–6734.

*EIS No. 20170124, Draft, FRA, NJ,* Hudson Tunnel Project, Comment Period Ends: 08/21/2017, Contact: Amishi Castelli 617–431–0416.

### Amended Notices

*EIS No. 20170114, Draft, USN, PRO,* Atlantic Fleet Training and Testing, Comment Period Ends: 08/29/2017, Contact: Todd Kraft 757–836–2943 Revision of the FR Notice Published 06/30/2017; Correction to Comment Period Ends from 08/14/2017 to 08/29/2017.

Dated: July 3, 2017.

**Dawn Roberts,**

*Management Analyst, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2017–14284 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2016–0701; FRL–9962–98]**

## Certain New Chemicals; Receipt and Status Information for April 2017

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document covers the period from April 3, 2017 to April 28, 2017.

**DATES:** Comments identified by the specific case number provided in this document, must be received on or before August 7, 2017.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0701, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

*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?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the actions addressed in this document.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

### II. What action is the Agency taking?

This document provides receipt and status reports, which cover the period from April 3, 2017 to April 28, 2017, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

### III. What is the Agency's authority for taking this action?

Under TSCA, 15 U.S.C. 2601 *et seq.,* EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory, please go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.*

Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic reports on the status of new chemicals under review and the receipt of NOCs to manufacture those chemicals.

### IV. Receipt and Status Reports

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that the information in the table is generic information because the specific information provided by the submitter was claimed as CBI.

For the 47 PMNs received by EPA during this period, Table 1 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer/importer; the potential uses identified by the manufacturer/importer in the PMN; and the chemical identity.

TABLE 1—PMNS RECEIVED FROM APRIL 3, 2017 TO APRIL 28, 2017

| Case No. | Received date | Projected notice end date | Manufacturer importer | Use | Chemical |
|---|---|---|---|---|---|
| P–16–0358 ..... | 4/21/2017 | 7/20/2017 | CBI ..... | (S) Chemical intermediate ... | (G) Alkyl phenol. |
| P–16–0429 ..... | 4/21/2017 | 7/20/2017 | CBI ..... | (G) Universal tint paste resin having high solids. | (G) Endcapped polysiloxane. |
| P–16–0438 ..... | 4/18/2017 | 7/17/2017 | CBI ..... | (S) Intermediate for pesticide inert. | (S) 3-butenenitrile, 2-(acetyloxy). |
| P–17–0004 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (G) Non-isolated intermediate. | (S) 1-tetradecene homopolymer. |
| P–17–0004 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (S) Base fluid/carrier fluid for additives in motor oil. | (S) 1-tetradecene homopolymer. |
| P–17–0004 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (S) Base fluid/carrier fluid for additives in industrial lubricants. | (S) 1-tetradecene homopolymer. |
| P–17–0004 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (S) Base fluid carrier fluid for additives in automatic transmission fluid. | (S) 1-tetradecene homopolymer. |
| P–17–0004 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (S) Chemical intermediate for specialty surfactants. | (S) 1-tetradecene homopolymer. |
| P–17–0005 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (G) Non-isolated intermediate. | (S) 1-tetradecene homopolymer hydrogenated. |
| P–17–0005 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (S) Base fluid/carrier fluid for additives in motor oil. | (S) 1-tetradecene homopolymer hydrogenated. |
| P–17–0005 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (S) Base fluid/carrier fluid for additives in industrial lubricants. | (S) 1-tetradecene homopolymer hydrogenated. |
| P–17–0005 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (S) Base fluid carrier fluid for additives in automatic transmission fluid. | (S) 1-tetradecene homopolymer hydrogenated. |
| P–17–0005 ..... | 4/20/2017 | 7/19/2017 | CBI ..... | (S) Chemical intermediate for specialty surfactants. | (S) 1-tetradecene homopolymer hydrogenated. |
| P–17–0196 ..... | 4/4/2017 | 7/3/2017 | CBI ..... | (G) Can coating ..... | (G) Styrenated alkyl and epoxidized acrylate polymer. |
| P–17–0236 ..... | 4/19/2017 | 7/18/2017 | DIC INTERNATIONAL (USA), LLC. | (G) Binder resin for electronic materials. | (G) Formaldehyde, polymer with (chloromethyl) oxirane and substituted aromatic compounds. |
| P–17–0236 ..... | 4/19/2017 | 7/18/2017 | DIC INTERNATIONAL (USA), LLC. | (G) Matrix resin for composite materials. | (G) Formaldehyde, polymer with (chloromethyl) oxirane and substituted aromatic compounds. |
| P–17–0259 ..... | 4/19/2017 | 7/18/2017 | CBI ..... | (G) Curative for thermosetting resins. | (G) Halogenated aromatic amine. |
| P–17–0262 ..... | 4/4/2017 | 7/3/2017 | CBI ..... | (G) Paint raw materials ..... | (G) Acryl-modified epoxy polymer with vegetable oil, fatty acid, acrylates and methacrylates with organic amine. |
| P–17–0264 ..... | 4/11/2017 | 7/10/2017 | Allnex USA, Inc. ..... | (S) Binder for glass coatings | (G) Alkanoic acid, 2-alkyl-, substituted alkyl ester, polymer with alkyl alkenoate, substituted carbomonocycle, substituted alkyl alkenoate and alkyl substituted alkenoate, substituted alkanenitrile-initiated. |
| P–17–0264 ..... | 4/11/2017 | 7/10/2017 | Allnex USA, Inc. ..... | (S) Coating resin intermediate. present in viacryl vsc 6800 used as a binder for glass coatings. | (G) Alkanoic acid, 2-alkyl-, substituted alkyl ester, polymer with alkyl alkenoate, substituted carbomonocycle, substituted alkyl alkenoate and alkyl substituted alkenoate, substituted alkanenitrile-initiated. |

TABLE 1—PMNS RECEIVED FROM APRIL 3, 2017 TO APRIL 28, 2017—Continued

| Case No. | Received date | Projected notice end date | Manufacturer importer | Use | Chemical |
|---|---|---|---|---|---|
| P–17–0265 ..... | 4/11/2017 | 7/10/2017 | Allnex USA, Inc. ..... | (S) Binder for glass coatings | (G) Alkanoic acid, alkyl-, substituted alkyl ester, polymer with alkyl alkenoate, substituted carbomonocycle, substituted alkyl alkenoate and alkyl substituted alkenoate, substituted alkanenitrile-initiated, polymers with substituted alkanenitrile-initiated, alkanoic acid-alkane substituted acrylates-substituted carbomonocycle polymer, compounds with alkylamino alkanol. |
| P–17–0265 ..... | 4/11/2017 | 7/10/2017 | Allnex USA, Inc. ..... | (S) Coating resin intermediate. present in viacryl vsc 6800 used as a binder for glass coatings. | (G) Alkanoic acid, alkyl-, substituted alkyl ester, polymer with alkyl alkenoate, substituted carbomonocycle, substituted alkyl alkenoate and alkyl substituted alkenoate, substituted alkanenitrile-initiated, polymers with substituted alkanenitrile-initiated, alkanoic acid-alkane substituted acrylates-substituted carbomonocycle polymer, compounds with alkylamino alkanol. |
| P–17–0267 ..... | 4/19/2017 | 7/18/2017 | CBI ..... | (G) Solvent, foam and refrigerant use. | (G) Chlorofluoroalkene. |
| P–17–0272 ..... | 4/5/2017 | 7/4/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| P–17–0273 ..... | 4/5/2017 | 7/4/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| P–17–0274 ..... | 4/5/2017 | 7/4/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| P–17–0275 ..... | 4/5/2017 | 7/4/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| P–17–0276 ..... | 4/5/2017 | 7/4/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| P–17–0277 ..... | 4/5/2017 | 7/4/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| P–17–0278 ..... | 4/13/2017 | 7/12/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid derived imidazoline salts. |
| P–17–0279 ..... | 4/13/2017 | 7/12/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid derived imidazoline salt. |
| P–17–0280 ..... | 4/13/2017 | 7/12/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid derived imidazoline salt. |
| P–17–0281 ..... | 4/21/2017 | 7/20/2017 | CBI ..... | (G) Water reducible resin ..... | (G) Polysiloxane-polyester polyol carboxylate. |
| P–17–0283 ..... | 4/12/2017 | 7/11/2017 | CBI ..... | (G) Lubricating oil additive for automotive engine oils. | (G) Arenesulfonic acid, alkyl derivatives, metal salts. |
| P–17–0284 ..... | 4/13/2017 | 7/12/2017 | CBI ..... | (G) In-process intermediate | (S) 2-heptanone, 4-hydroxy-. |
| P–17–0285 ..... | 4/13/2017 | 7/12/2017 | CBI ..... | (G) In-process intermediate | (S) 4-hepten-2-one. |
| P–17–0286 ..... | 4/13/2017 | 7/12/2017 | Shin-etsu microsi ..... | (G) This material is added ca.0.05–10% in resist composition. | (G) Bicyclo[2.2.1] alkane-1-alkanesulfonic acid, 7,7-dimethyl-2-oxo-, [(3,5-dimethoxy-2-naphthalenyl) carbonyl] methylazanyl ester, (1s,4r)-. |
| P–17–0287 ..... | 4/13/2017 | 7/12/2017 | Shin-etsu microsi ..... | (G) This material is added ca.0.05–10% in resist composition. | (G) Phenylsulfonic acid, 4-methyl-, [(dimethoxy-2-naphthalenyl) carbonyl]methylazanyl ester. |

TABLE 1—PMNS RECEIVED FROM APRIL 3, 2017 TO APRIL 28, 2017—Continued

| Case No. | Received date | Projected notice end date | Manufacturer importer | Use | Chemical |
|---|---|---|---|---|---|
| P–17–0289 ..... | 4/17/2017 | 7/16/2017 | CBI ..... | (S) Chemical intermediate ... | (G) Fluoroalkyl sulfonamide derivative. |
| P–17–0291 ..... | 4/19/2017 | 7/18/2017 | Chevron Phillips chemical company, LP. | (G) Exported production volume. | (G) Linear and branched alkyl mercaptans. |
| P–17–0291 ..... | 4/19/2017 | 7/18/2017 | Chevron Phillips chemical company, LP. | (G) Component in mining formuations. | (G) Linear and branched alkyl mercaptans. |
| P–17–0292 ..... | 4/19/2017 | 7/18/2017 | Chevron Phillips chemical company, LP. | (G) Exported production volume. | (G) Linear and branched alkyl sulfides. |
| P–17–0292 ..... | 4/19/2017 | 7/18/2017 | Chevron Phillips chemical company, LP. | (G) Component in mining formuations. | (G) Linear and branched alkyl sulfides. |
| P–17–0293 ..... | 4/24/2017 | 7/23/2017 | Allnex USA, Inc. ..... | (S) Binder for powder coating. | (G) Substituted carbomonocycle, polymer with substituted carbonomoncycles, alkyl substituted- alkanediols, alkanediol, alkanedioic acid, and dialkylene glycol. |
| P–17–0294 ..... | 4/25/2017 | 7/24/2017 | Akzo nobel functional chemicals, LLC. | (S) The PMN substance will be used as an organic peroxide polymerization initiator for unsaturated acrylic, unsaturated polyester and vinyl ester resins. These uses will include traditional acrylic systems such as acrylic solid surface, acrylic adhesives, acrylic castings and acrylic coatings. | (S) 2-butanone, 3-methyl-, peroxide. |
| P–17–0295 ..... | 4/25/2017 | 7/24/2017 | CBI ..... | (S) Refrigerant used in closed systems for (i) chillers (commercial comfort air conditioners); and (ii) industrial process refrigeration. | (G) Hydrochlorofluoroolefin. |

For the 13 TMEs received by EPA during this period, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME; the date the TME was received by EPA; the projected end date for EPA's review of the TME; the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE 2—TMES RECEIVED FROM APRIL 3, 2017 TO APRIL 28, 2017

| Case No. | Received date | Projected notice end date | Manufacturer importer | Use | Chemical |
|---|---|---|---|---|---|
| T–17–0003 ..... | 4/5/2017 | 5/20/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| T–17–0004 ..... | 4/5/2017 | 5/20/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| T–17–0005 ..... | 4/5/2017 | 5/20/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| T–17–0006 ..... | 4/5/2017 | 5/20/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| T–17–0007 ..... | 4/5/2017 | 5/20/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| T–17–0008 ..... | 4/5/2017 | 5/20/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid amide alkyl amine salts. |
| T–17–0009 ..... | 4/13/2017 | 5/28/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid derived imidazoline salt. |
| T–17–0010 ..... | 4/13/2017 | 5/28/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid derived imidazoline salts. |
| T–17–0011 ..... | 4/13/2017 | 5/28/2017 | Cargill, Incorporated ..... | (G) Component in asphalt emulsions. | (G) Fatty acid derived imidazoline salt. |
| T–17–0012 ..... | 4/19/2017 | 6/3/2017 | Chevron Phillips chemical company, LP. | (G) Exported production volume. | (G) Linear and branched alkyl mercaptans. |

TABLE 2—TMEs RECEIVED FROM APRIL 3, 2017 TO APRIL 28, 2017—Continued

| Case No. | Received date | Projected notice end date | Manufacturer importer | Use | Chemical |
|---|---|---|---|---|---|
| T–17–0012 ..... | 4/19/2017 | 6/3/2017 | Chevron Phillips chemical company, LP. | (G) Component in mining formuations. | (G) Linear and branched alkyl mercaptans. |
| T–17–0013 ..... | 4/19/2017 | 6/3/2017 | Chevron Phillips chemical company, LP. | (G) Exported production volume. | (G) Linear and branched alkyl sulfides. |
| T–17–0013 ..... | 4/19/2017 | 6/3/2017 | Chevron Phillips chemical company, LP. | (G)Component in mining formuations. | (G) Linear and branched alkyl sulfides. |

For the 15 NOCs received by EPA during this period, Table 2 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the NOC; the date the NOC was received by EPA; the projected date of commencement provided by the submitter in the NOC; and the chemical identity.

TABLE 3—NOCs RECEIVED FROM APRIL 3, 2017 TO APRIL 28, 2017

| Case No. | Received date | Commencement date | Chemical |
|---|---|---|---|
| J–17–0006 ..... | 4/18/2017 | 3/27/2017 | (G) Modified microorganism. |
| P–13–0285 ..... | 4/19/2017 | 3/22/2017 | (G) Polyamic acid. |
| P–14–0666 ..... | 4/20/2017 | 4/7/2017 | (S) Benzoic acid, 4-(benzoylamino)-, lithium salt (1:1). |
| P–15–0307 ..... | 4/26/2017 | 3/27/2017 | (G) Substituted bis[phenol] polymer with substituted benzene. |
| P–15–0487 ..... | 4/12/2017 | 3/15/2017 | (G) Multi-walled carbon nanotubes. |
| P–15–0488 ..... | 4/12/2017 | 3/15/2017 | (G) Multi-walled carbon nanotubes. |
| P–15–0489 ..... | 4/12/2017 | 3/15/2017 | (G) Multi-walled carbon nanotubes. |
| P–15–0490 ..... | 4/12/2017 | 3/15/2017 | (G) Multi-walled carbon nanotubes. |
| P–15–0491 ..... | 4/12/2017 | 3/15/2017 | (G) Multi-walled carbon nanotubes. |
| P–16–0034 ..... | 4/21/2017 | 4/3/2017 | (G) Cashew, nutshell liq., polymer with epichlorohydrin, amines, formaldehdye, phenol and glycol. |
| P–16–0079 ..... | 4/10/2017 | 3/13/2017 | (G) Polyarylate. |
| P–16–0265 ..... | 4/21/2017 | 3/22/2017 | (S) Siloxanes and silicones, me ph, me 3,3,3-trifluoropropyl. |
| P–16–0350 ..... | 4/4/2017 | 4/3/2017 | (G) Polyaralkyl aryl ester of methacrylic acid. |
| P–16–0358 ..... | 4/27/2017 | 4/25/2017 | (G) Alkyl phenol. |
| P–17–0140 ..... | 4/20/2017 | 3/22/2017 | (S) Ethyl 3,4-dichlorobenzoate. |

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: June 8, 2017.

**Pamela Myrick,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2017–14326 Filed 7–6–17; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[PS Docket No. 16–269]**

### Procedures for Commission Review of State Opt-Out Request From the FirstNet Radio Access Network

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** By this document, the Public Safety and Homeland Security Bureau (Bureau) issues a Public Notice establishing an expedited comment period to allow public comment on two ex parte filings and any related filings submitted by the First Responder Network Authority (FirstNet).

**DATES:** Comments are due July 17, 2017.

**FOR FURTHER INFORMATION CONTACT:** Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1428.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice in PS Docket No. 16–269, DA 17–625, released on June 28, 2017. In a June 5, 2017 ex parte filing, FirstNet filed a spreadsheet listing ''FCC Evaluation Requirements'' associated with specific elements of the anticipated state plan categories, stating that the spreadsheet represents an ''interoperability compliance matrix that documents the technical standards that will be necessary to ensure a state or territory's RAN is interoperable with the [National Public Safety Broadband Network] NPSBN.'' On June 16, 2017, FirstNet filed an additional ex parte letter reporting on a June 14 meeting with Bureau staff, in which it proffers a revised interoperability compliance matrix. In the revised matrix, FirstNet proposes that the Commission's review under the second statutory prong be limited to whether alternative state plans comply with recommended requirements [4] and [5] from the Interoperability Board Report. (Recommended requirement [4] states that hardware and software systems comprising the NPSBN SHALL support APNs defined for PSAN usage. Recommended requirement [5] states that hardware and software systems comprising the NPSBN SHALL support nationwide APNs for interoperability.) The Public Notice seeks comment on whether the Commission should incorporate these policies when evaluating state compliance with the NPSBN.

The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/*. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format),

send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2017–14216 Filed 7–6–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 2017.

*A. Federal Reserve Bank of Richmond* (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *Sandy Spring Bancorp, Inc.,* Olney, Maryland; to acquire WashingtonFirst Bankshares, Inc., and thereby indirectly acquire WashingtonFirst Bank, both of Reston, Virginia.

Board of Governors of the Federal Reserve System, July 3, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017–14275 Filed 7–6–17; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225; OMB No. 7100–0216).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC, 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

*Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:*

*Report Title:* Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks.

*Agency Form Number:* FR 2225.

*OMB Control Number:* 7100–0216.

*Frequency:* Annually.

*Respondents:* Foreign banking organizations (FBO).

*Estimated Number of Respondents:* 50.

*Estimated Average Hours per Response:* 1.

*Estimated annual burden hours:* 50.

*General description of report:* This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve's Payment System Risk (PSR) policy. A key component of the PSR policy is a limit, or a net debit cap, on an institution's negative intraday balance in its Reserve Bank account. The Federal Reserve calculates an institution's net debit cap by applying the multiple associated with the net debit cap category to the institution's capital. For foreign banking organizations (FBOs), a percentage of the FBO's capital measure, known as the U.S. capital equivalency, is used to calculate the FBO's net debit cap.

FBOs that wish to establish a positive net debit cap and have a strength of support assessment (SOSA) 1 or SOSA 2 ranking or hold a financial holding company (FHC) designation are required to submit the FR 2225 to their Administrative Reserve Bank (ARB).[1] [2]

*Legal authorization and confidentiality:* The Federal Reserve Board's Legal Division has determined that the FR 2225 is authorized by Sections 11(i), 16, and 19(f) of the Federal Reserve Act (12 U.S.C. 248(i), 248–1, and 464). An FBO is required to respond in order to obtain or retain a benefit, *i.e.,* in order for the U.S. branch or agency of an FBO to establish and maintain a non-zero net debit cap. Respondents are not asked to submit any data that are not ordinarily disclosed to the public; accordingly, such items would not routinely be protected from disclosure under the

[1] The Administrative Reserve Bank is responsible for the administration of Federal Reserve credit, reserves, and risk-management policies for a given institution or other legal entity.

[2] Most FBOs that are ranked SOSA 3 do not qualify for a positive net debit cap. In the event a Reserve Bank grants a net debit cap or extends intraday credit to a financially healthy SOSA 3-ranked FBO, the financially healthy SOSA 3-ranked FBOs will have their U.S. capital equivalency based on their ''Net due to related depository institutions'' as reported on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), Schedule RAL, Item 5.a, Column A, for the most recent quarter.

Freedom of Information Act (FOIA). To the extent an institution submits data it believes are confidential and can establish the potential for substantial competitive harm, those responses would be protected from disclosure pursuant to exemption 4 of the FOIA (5 U.S.C. 552(b)(4)), under the standards set forth in *National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974). Such a determination would be made on a case-by-case basis in response to a specific request for disclosure of the information.

*Current actions:* On April 7, 2017, the Board published a notice in the **Federal Register** (82 FR 17005) requesting public comment for 60 days on the extension, without revision, of the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks. The comment period for this notice expired on June 6, 2017. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, July 3, 2017.

**Ann E. Misback**

*Secretary of the Board.*

[FR Doc. 2017–14259 Filed 7–6–17; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 24, 2017.

*A. Federal Reserve Bank of Atlanta* (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Angela G. Davis and Darcilla D. Richardson,* both of Heflin, Alabama*;* to retain voting shares of East Alabama Financial Group, Inc., and thereby indirectly retain additional voting shares of Small Town Bank, both of Wedowee, Alabama. Notificants will join the previously approved Davis Family control group.

Board of Governors of the Federal Reserve System, June 30, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017–14276 Filed 7–6–17; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in the Privacy of Consumer Financial Information Rule (Privacy Rule or Rule). That clearance expires on October 31, 2017.

**DATES:** Comments must be received on or before September 5, 2017.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Privacy Rule: Paperwork Comment: FTC File No. P085405'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/glbfinancialrulepra* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Requests for copies of the collection of information and supporting documentation should be addressed to David Lincicum, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW., Drop Box 8232, Washington, DC 20580, (202) 326–2773.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [1] substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies, including the FTC, to the Bureau of Consumer Financial Protection (CFPB) as of July 21, 2011. This transfer to the CFPB included most provisions of Subtitle A of Title V of the GrammLeach-Bliley Act (GLB Act), with respect to financial institutions described in section 504 of the GLB Act. Pursuant to the GLB Act, only the FTC retains rulemaking authority for its Privacy Rule, 16 CFR 313, for motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[2] The CFPB implemented its own regulations to enforce the Dodd-Frank provisions, including Privacy of Consumer Financial Information (Regulation P), 12 CFR 1016.[3] Contemporaneous with that issuance, the CFPB and FTC each had submitted to OMB, and received its approval for, the agencies' respective burden estimates reflecting their overlapping enforcement jurisdiction. The FTC supplemented its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. Following the preliminary background information, the discussion in the Burden Statement below continues that analytical framework with appropriate updates or other revisions for instant purposes.

#### Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* Dodd-Frank Act, at section 1029(a), (c).

[3] *See* 76 FR 79025 (Dec. 21, 2011); Privacy of Consumer Financial Information (Regulation P), 12 CFR 1016, OMB Control Number 3170–0010.

3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with Commission's Financial Privacy Rule,16 CFR 313 (OMB Control Number 3084–0121).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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. All comments must be received on or before September 5, 2017.

The Privacy Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the financial institutions with which they conduct business. As mandated by the GLB1 Act (GLBA), 15 U.S.C. 6801–6809, the Rule requires financial institutions to disclose to consumers: (1) Initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer; [4] and (4) notice of changes in the institution's practices on information sharing. These requirements are subject to the PRA. The Rule does not require recordkeeping. For PRA burden calculations the FTC has attributed to itself the burden for all motor vehicle dealers that do not routinely extend credit to consumers directly without assigning the credit to unaffiliated third parties (hereafter, motor vehicle dealers), and then shares equally the remaining PRA burden with the CFPB for other types of financial institutions over which both agencies have enforcement authority. *See* 12 U.S.C. 5519.

**Privacy Rule Burden Statement**

*Estimated Annual Hours Burden:* 1,725,600 annual hours (FTC portion).

As noted in previous burden estimates for the Privacy Rule, determining the PRA burden of the Rule's disclosure requirements is very difficult because of the highly diverse group of affected entities, consisting of financial institutions not regulated by a Federal financial regulatory agency. *See* 15 U.S.C. 6805 (committing to the Commission's jurisdiction entities that are not specifically subject to another agency's jurisdiction).

The burden estimates represent the FTC staff's best assessment, based on its knowledge and expertise relating to the financial institutions subject to the Commission's jurisdiction under this law. To derive these estimates, staff considered the wide variations in covered entities. In some instances, covered entities may make the required disclosures in the ordinary course of business, apart from the Privacy Rule. In addition, some entities may use highly automated means to provide the required disclosures, while others may rely on methods requiring more manual effort. The burden estimates shown below include the time that may be necessary to train staff to comply with the regulations. These figures are averages based on staff's best estimate of the burden incurred over the broad spectrum of covered entities.

Staff estimates that the number of entities each year that will address the Privacy Rule for the first time will be 5,000 and the number of established entities already familiar with the Rule will be 100,000. While the number of established entities familiar with the Rule would theoretically increase each year with the addition of new entrants, staff retains its estimate of established entities for each successive year given that a number of the established entities will close in any given year, and also given the difficulty of establishing a more precise estimate.

Staff believes that the usage of the model privacy form and the availability of the form builder simplify and automate much of the work associated with creating the disclosure documents for new entrants. Staff thus estimates 1 hour of clerical time and 2 hours of professional/technical time per new entrant.

For established entities, staff similarly believes that the usage of the model privacy form and the availability of the Online Form Builder reduces the time associated with the modification of the notices. Staff thus estimates 7 hours of clerical time and 3 hours of professional/technical time per respondent. Staff estimates that no more than 1% of the estimated 100,000 established-entity respondents would make additional changes to privacy policies at any time other than the occasion of the annual notice. Furthermore, under Section 503(f), businesses who have not changed their privacy notice since the last notice sent and who do not share information with non-affiliated third parties outside of certain statutory exceptions do not have to issue annual notices to their customers. Staff estimates that at least 80% of businesses covered by the rule will, accordingly, not be required to issue annual notices.

The complete burden estimates for new entrants and established entities are detailed in the charts below.

START-UP HOURS AND LABOR COSTS FOR ALL NEW ENTRANTS

[Table IA]

| Event | Hourly wage and labor category * | Hours per respondent | Approx. number of respondents | Approx. total annual hrs. | Approx. total labor costs |
|---|---|---|---|---|---|
| Reviewing internal policies and developing GLBA-implementing instructions **. | $42.76 Professional/ Technical. | 20 | 5,000 | 100,000 | $4,276,000 |

[4] On December 4, 2015, Congress amended the GLBA as part of the Fixing America's Surface Transportation Act (FAST Act). This amendment, titled Eliminate Privacy Notice Confusion (FAST Act, Pub. L. 114094, section 75001) added new GLBA section 503(f). This subsection provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers. Section 503(f) requires that to qualify for this exception, a financial institution must not share nonpublic personal information about customers except as described in certain statutory exceptions, under which sharing does not trigger a customer's statutory right to opt out of the sharing. In addition, section 503(f)(2) requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recent privacy notice the customer received.

START-UP HOURS AND LABOR COSTS FOR ALL NEW ENTRANTS—Continued

[Table IA]

| Event | Hourly wage and labor category * | Hours per respondent | Approx. number of respondents | Approx. total annual hrs. | Approx. total labor costs |
|---|---|---|---|---|---|
| Creating disclosure document or electronic disclosure (including initial, annual, and opt out disclosures). | $17.91 Clerical | 1 | 5,000 | 5,000 | 89,550 |
| | $42.76 Professional/ Technical. | 2 | 5,000 | 10,000 | 427,600 |
| Disseminating initial disclosure (including opt out notices). | $17.91 Clerical | 15 | 5,000 | 75,000 | 1,343,250 |
| | $42.76 Professional/ Technical. | 10 | 5,000 | 50,000 | 2,138,000 |
| Total | | | | 240,000 | 8,274,400 |

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on mean wages for Financial Examiners and for Office and Administrative Support, corresponding to professional/technical time (*e.g.,* compliance evaluation and/or planning, designing and producing notices, reviewing and updating information systems), and clerical time (*e.g.,* reproduction tasks, filing, and, where applicable to the given event, typing or mailing) respectively. See BLS Occupational Employment and Wages, May 2016, Table 1 at *http://www.bls.gov/news.release/pdf/ocwage.pdf.* Labor cost totals reflect solely that of the commercial entities affected. Staff estimates that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** Reviewing instructions includes all efforts performed by or for the respondent to: Determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of the request, and determine the appropriate response (including the creation and dissemination of documents and/or electronic disclosures).

Burden for established entities already familiar with the Rule predictably would be less than for startup entities because start-up costs, such as crafting a privacy policy, are generally one-time costs and have already been incurred. Staff's best estimate of the average burden for these entities is as follows:

BURDEN HOURS AND COSTS FOR ALL ESTABLISHED ENTITIES

[Table IB]

| Event | Hourly wage and labor category * | Hours per respondent | Approx. number of respondents ** | Approx. total annual hrs. | Approx. total labor costs |
|---|---|---|---|---|---|
| Reviewing GLBA-implementing policies and practices.. | $42.76 Professional/ Technical. | 4 | 100,000 | 400,000 | $17,104,000 |
| Disseminating initial notices to new customers | $17.91 Clerical | 15 | 100,000 | 1,500,000 | 26,865,000 |
| Disseminating annual disclosures to pre-existing customers. | $17.91 Clerical | 15 | 14,000 | 210,000 | 3,761,100 |
| | $42.76 Professional/ Technical. | 5 | 14,001,000 | 70,000 | 2,993,200 |
| | $17.91 Clerical | 7 | | 7,000 | 125,370 |
| Changes to privacy policies and related disclosures. | $42.76 Professional/ Technical. | 3 | 1,000 | 3,000 | 128,280 |
| Total | | | | 2,190,000 | 50,976,950 |

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on mean wages for Financial Examiners and for Office and Administrative Support, corresponding to professional/technical time (*e.g.,* compliance evaluation and/or planning, designing and producing notices, reviewing and updating information systems), and clerical time (*e.g.,* reproduction tasks, filing, and, where applicable to the given event, typing or mailing) respectively. See BLS Occupational Employment and Wages, May 2016, Table 1 at *http://www.bls.gov/news.release/pdf/ocwage.pdf.* Labor cost totals reflect solely that of the affected commercial entities. Consumers have a continuing right to opt out, as well as a right to revoke their opt-out at any time. When a respondent changes its information sharing practices, consumers are again given the opportunity to opt out. Again, staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** The estimate of respondents which are required to disseminate annual notices is based on the following assumptions: (1) 100,000 established respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 20% (14,000) of whom have made changes to their policies and share nonpublic information outside of the statutory exceptions, and therefore are required to provide annual notices under GLBA 503(f). See CFPB, Proposed Rule, 81 FR 44801, 44809 (July 11, 2016); (3) and no more than 1% (1,000) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (4) such changes will occur no more often than once per year.

As calculated above, the total annual PRA burden hours and labor costs for all affected entities in a given year would be 2,430,000 hours and $59,251,350, respectively.

The FTC now carves out from these overall figures the burden hours and labor costs associated with motor vehicle dealers. This is because the CFPB does not enforce the Privacy Rule for those types of entities. We estimate the following:

ANNUAL START-UP HOURS AND LABOR COSTS FOR NEW MOTOR VEHICLE DEALER ENTRANTS ONLY

[Table IIA]

| Event | Hourly wage and labor category | Hours per respondent | Approx. number of respondents (Table IA inputs × 0.42) ** | Approx. total annual hrs. | Approx. total labor costs |
|---|---|---|---|---|---|
| Reviewing internal policies and developing GLBA-implementing instructions **. | $42.76 Professional/Technical | 20 | 2,100 | 42,000 | $1,795,920 |
| Creating disclosure document or electronic disclosure (including initial, annual, and opt out disclosures). | $17.91 Clerical | 1 | 2,100 | 2,100 | 37,611 |
| | $42.76 Professional/Technical | 2 | 2,100 | 4,200 | 179,592 |
| Disseminating initial disclosure (including opt out notices). | $17.91 Clerical | 15 | 2,100 | 31,500 | 564,165 |
| | $42.76 Professional/Technical | 10 | 2,100 | 21,000 | 897,960 |
| Total | | | 100,800 | 3,475,248 | |

** Multiply the number of respondents from the comparable table above on all new entrants by the following allocation (43,708/105,000) = 0.42. The number in the denominator represents the total of the FTC's existing Privacy Rule estimates for new entrants (5,000) and established entities (100,000). The numerator represents an estimate of motor vehicle respondents. For this category, Commission staff relied on the following industry estimates: 16,708 new car dealers per *National Automobile Dealers Association* data (2016) and 12,000 independent/used car dealers who do not extend credit directly to consumers without routinely assigning the credit to third-parties per *National Independent Automobile Dealers Association* data (2012), respectively, in addition to 15,000 dealers of other motor vehicles (motorcycles, boats, other recreational vehicles) per the 2012 economic census, which are also covered within the definition of ''motor vehicle dealer'' under section 1029(a) of the Dodd-Frank Act.

ANNUAL BURDEN HOURS AND LABOR COSTS FOR ESTABLISHED MOTOR VEHICLE DEALERS ONLY

[Table IIB]

| Event | Hourly wage and labor category * | Hours per respondent | Approx. number of respondents *** (Table IB inputs × 0.42) | Approx. total annual hrs. | Approx. total labor costs |
|---|---|---|---|---|---|
| Reviewing GLBA-implementing policies and practices. | $42.76 Professional/Technical | 4 | 42,000 | 168,600 | $7,209,336 |
| Disseminating initial notices to new customers. | $17.91 Clerical | 15 | 42,000 | 630,000 | 11,283,300 |
| Disseminating annual disclosures to pre-existing customers. | $17.91 Clerical | 15 | 5,880 | 88,200 | $1,579,662 |
| | $42.76 Professional/Technical | 5 | 5,880 | 29,400 | $1,257,144 |
| Changes to privacy policies and related disclosures. | $17.91 Clerical | 7 | 420 | 2,940 | 52,655 |
| | $42.76 Professional/Technical | 3 | 420 | 1,260 | 53,878 |
| Total | | | | 920,400 | 21,435,975 |

The FTC's portion of the annual hourly burden would be 1,021,200 + ((2,430,000—1,021,200)/2) = 1,725,600 annual hours. The FTC's portion of the annual cost burden would be $24,911,223 + $((59,251,350 − 24,911,223)/2) = $42,081,287.

**Estimated Capital/Other Non-Labor Costs Burden**

Staff believes that capital or other non-labor costs associated with the document requests are minimal. Covered entities will already be equipped to provide written notices (*e.g.,* computers with word processing programs, copying machines, mailing capabilities). Most likely, only entities that already have online capabilities will offer consumers the choice to receive notices via electronic format. As such, these entities will already be equipped with the computer equipment and software necessary to disseminate the required disclosures via electronic means.

*Request for Comments*

You can file a comment online or on paper. Write ''Privacy Rule: Paperwork Comment: FTC File No. P085405'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/glbfinancialrulepra* by following the instructions on the web based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Privacy Rule: Paperwork Comment: FTC File No. P085405'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex C), Washington, DC 20580,

or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex C), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Web site at *www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Once your comment has been posted on the public FTC Web site—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request in accordance with the law and the public interest. Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c).

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 5, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *https://www.ftc.gov/site-information/privacy-policy.*

**David C. Shonka,**

*Principal Deputy General Counsel.*

[FR Doc. 2017–14078 Filed 7–6–17; 8:45 am]

**BILLING CODE 6750–01–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–MK–2017–02; Docket No. 2017–0002; Sequence 12]**

### The Presidential Commission on Election Integrity (PCEI); Upcoming Public Advisory Meeting

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Supplemental meeting notice.

**SUMMARY:** The Presidential Advisory Commission on Election Integrity (Commission), a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), and Executive Order 13799, will hold its first meeting on Wednesday, July 19, 2017. This meeting will consist of a ceremonial swearing in of Commission members, introductions and statements from members, a discussion of the Commission's charge and objectives, possible comments or presentations from invited experts, and a discussion of next steps and related matters. The General Services Administration is announcing this meeting with less than 15 calendar days' public notice as July 4th is a federal holiday, thus delaying the administrative processing of this notice.

**DATES:** *Meeting Date:* The first Commission meeting will be held on Wednesday, July 19, 2017, from 11:00 a.m., Eastern Daylight Time (EDT) until no later than 5:00 p.m., EDT.

**ADDRESSES:** The meeting will be held at the Eisenhower Executive Office Building, Room 350, located at 1650 Pennsylvania Avenue NW., Washington, DC 20502. It will be open to the public through livestreaming on *https://www.whitehouse.gov/live.*

**FOR FURTHER INFORMATION CONTACT:** To obtain information about the Commission or to submit written comments for the Commission's consideration, contact the Commission's Designated Federal Officer, Andrew Kossack, via email at *ElectionIntegrityStaff@ovp.eop.gov* or telephone at 202–456–3794. Please note the Commission may post written comments publicly, including names and contact information, in accordance with the provisions of FACA (5 U.S.C. App.). There will not be oral comments from the public at this initial meeting.

The Commission will provide individuals interested in providing oral comments the opportunity to do so at subsequent meetings. Requests to accommodate disabilities with respect to livestreaming or otherwise should also be sent to the email address listed above, preferably at least 10 days prior to the meeting to allow time for processing.

**SUPPLEMENTARY INFORMATION:** The Commission was established in accordance with E.O. 13799 of March 11, 2017 (*https://www.federalregister.gov/documents/2017/05/16/2017-10003/establishment-of-presidential-advisory-commission-on-election-integrity*), the Commission's charter, and the provisions of FACA. The Commission will, consistent with applicable law and E.O. 13799, study the registration and voting processes used in Federal elections. The Commission shall be solely advisory and shall submit a report to the President of the United States that identifies the following:

a. Those laws, rules, policies, activities, strategies, and practices that enhance the American people's confidence in the integrity of the voting processes used in Federal elections;

b. those laws, rules, policies, activities, strategies, and practices that undermine the American people's confidence in the integrity of voting processes used in Federal elections; and

c. those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.

Dated: July 3, 2017.

**Alexander J. Kurien,**

*Deputy Associate Administrator, Office of Asset & Transportation Management, Office of Government-wide Policy.*

[FR Doc. 2017–14311 Filed 7–3–17; 4:15 pm]

**BILLING CODE 6820–61–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–40B, CMS–43, CMS–1763, CMS–10174, CMS–10215, and CMS–R–285]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by August 7, 2017.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension, revision or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Application for Enrollment in Medicare the Medical Insurance Program; *Use:* The CMS–40B form is used to establish entitlement to and enrollment in supplementary medical insurance for beneficiaries who already have Part A, but not Part B. The form solicits information that is used to determine enrollment for individuals who meet the requirements in section 1836 of the Social Security Act as well as the entitlement of the applicant or a spouse regarding a benefit or annuity paid by the Social Security Administration or the Office of Personnel Management for premium deduction purposes. The Social Security Administration will use the collected information to establish Part B enrollment. *Form Number:* CMS–40B (OMB control number: 0938–1230); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 200,000; *Total Annual Responses:* 200,000; *Total Annual Hours:* 50,000. (For policy questions regarding this collection contact Carla Patterson at 410–786–8911.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease; *Use:* The CMS–43 application is used (in conjunction with CMS–2728) to establish entitlement to, and enrollment in, Medicare Part A (and Part B) for individuals with end stage renal disease. The application is completed by a Social Security Administration (SSA) claims representative or field representative using information provided by the individual during an interview. The CMS–43 application follows the questions and requirements used by SSA to determine Title II eligibility. This is done not only for consistency purposes, but because certain Title II and Title XVIII insured status and relationship requirements must be met in order to qualify for Medicare under the end stage renal disease provisions. *Form Number:* CMS–43 (OMB control number: 0938–0800); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 25,000; *Total Annual Responses:* 25,000; *Total Annual Hours:* 10,400. (For policy questions regarding this collection contact Carla Patterson at 410–786–8911.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Request for Termination of Premium Hospital and Supplementary Medical Insurance; *Use:* The CMS–1763 form provides us and the Social Security Administration (SSA) with the enrollee's request for termination of Part B, Part A or both Part B and A premium coverage. The form is completed by an SSA claims or field representative using information provided by the Medicare enrollee during an interview. The purpose of the form is to provide to the enrollee with a standardized format to request termination of Part B, Part A premium coverage or both, explain why the enrollee wishes to terminate such coverage, and to acknowledge that the ramifications of the decision are understood. *Form Number:* CMS–1763 (OMB control number: 0938–0025); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 101,000; *Total Annual Responses:* 101,000; *Total Annual Hours:* 16,867. (For policy questions regarding this collection contact Carla Patterson at 410–786–8911.)

4. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of*

*Information Collection:* Collection of Prescription Drug Event Data from Contracted Part D Providers for Payment; *Use:* The collected information is used primarily for payment, but is also used for claim validation as well as for other legislated functions such as quality monitoring, program integrity, and oversight. *Form Number:* CMS–10174 (OMB control number: 0938–0982); *Frequency:* Monthly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 779; *Total Annual Responses:* 1,409,828,464; *Total Annual Hours:* 2,820. (For policy questions regarding this collection contact Ivan Iveljic at 410–786–3312.)

5. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicaid Payment for Prescription Drugs—Physicians and Hospital Outpatient Departments Collecting and Submitting Drug Identifying Information to State Medicaid Programs; *Use:* States are required to provide for the collection and submission of utilization data for certain physician-administered drugs in order to receive federal financial participation for these drugs. Physicians, serving as respondents to states, submit National Drug Code numbers and utilization information for ''J'' code physician-administered drugs so that the states will have sufficient information to collect drug rebate dollars. *Form Number:* CMS–10215 (OMB control number: 0938–1026); *Frequency:* Weekly; *Affected Public:* Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 20,000; *Total Annual Responses:* 3,910,000; *Total Annual Hours:* 16,227. (For policy questions regarding this collection contact Lisa Ferrandi at 410–786–5445.)

6. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Request for Retirement Benefit Information; *Use:* Section 1818(d)(5) of the Social Security Act provides that former state and local government employees (who are age 65 or older, have been entitled to Premium Part A for at least 7 years, and did not have the premium paid for by a state, a political subdivision of a state, or an agency or instrumentality of one or more states or political subdivisions) may have the Part A premium reduced to zero. These individuals must also have 10 years of employment with the state or local government employer or a combination of 10 years of employment with a state or local government employer and a non-government employer. The CMS–R–285 form is an essential part of the process of determining whether an individual qualifies for the premium reduction. The Social Security Administration will use this information to help determine whether a beneficiary meets the requirements for reduction of the Part A premium. *Form Number:* CMS–R–285 (OMB control number: 0938–0769); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 125. (For policy questions regarding this collection contact Carla Patterson at 410–786–8911.)

Dated: June 30, 2017.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2017–14230 Filed 7–6–17; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Notice of Single Source Award to the Genesee County Health Department for Addressing and Preventing Lead Exposure Through Healthy Start in Genesee County, Michigan

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of single source award.

**SUMMARY:** HRSA announces its intent to award up to $14,975,000 for a cooperative agreement to the Genesee County Health Department, which operates the Genesee County Healthy Start program. The purpose of this cooperative agreement is to expedite and strengthen the ongoing response to address the health effects of lead exposure resulting from the Flint, MI, public water supply contamination.

**SUPPLEMENTARY INFORMATION:**

*Intended Recipient of the Award:* Genesee County Health Department.

*Amount of Non-Competitive Awards:* Up to $14,975,000.

*Period of Funding:* July 1, 2017–June 30, 2022.

*CFDA Number:* 93.926.

*Authority:* Water Infrastructure Improvements for the Nation (WIIN) Act (Pub. L. 114–322); Section 330H of the Public Health Service Act (42 U.S.C. 254c–8), as amended by Public Law 110–339, Section 2; and Further Continuing and Security Assistance Appropriations Act, 2017 (Pub. L. 114–254).

*Justification:* Flint, MI, and the surrounding community continues to experience ongoing health needs, particularly among pregnant women and young children, associated with elevated levels of lead in the public water supply resulting from the city's switch from the Detroit Water Authority to the Flint Water Systems between April 2013 and October 2015.

On January 5, 2016, the state of Michigan declared a state of emergency for Genesee County, which includes the city of Flint, authorizing the use of state resources to address the public health crisis created by the elevated levels of lead in the public water system. On January 16, 2016, a federal emergency was declared for the state of Michigan and authorized federal assistance to provide water, water filters, water filter cartridges, water test kits, and other necessary related items.

Prenatal lead exposure can affect fertility, the likelihood of miscarriage, pre-term birth, low birth weight, infant neurodevelopment, and gestational hypertension. Of particular concern are the long-term effects in children such as developmental and cognitive delays, and behavioral disorders. The Healthy Start program aims to reduce disparities in infant mortality and improve perinatal and child health outcomes. To advance this mission, the goal of this program is to minimize developmental delays among lead-exposed children up to age 6 in Flint and the surrounding Genesee County area by connecting them to appropriate screening, services, and supports.

Thus, HRSA intends to award a one-time, single source cooperative agreement to the Genesee County Health Department to expedite and strengthen the ongoing response to address the health effects of lead exposure resulting from the Flint, MI, public water supply contamination. This award will enable the Genesee County Health Department to continue to play a vital role in assuring all pregnant women and children impacted by lead contamination in Genesee County have access to comprehensive health and social services. With these funds, the Genesee County Health Department will leverage its existing Healthy Start infrastructure and in-depth understanding of the maternal and child population in Genesee County to assess, mitigate, and provide consultation to pregnant women and children up to age 6 that may be impacted by lead exposure during the Flint water crisis. Activities under this award include identifying children in Flint and the

surrounding Genesee County area who have been affected by lead exposure to assess their receipt of recommended services in order to minimize developmental delay, and coordinating access to appropriate medical, behavioral, and developmental screening, services, and supports for impacted women, children, and their families. As the only Healthy Start grantee in the only community that had a federal emergency declaration concerning lead contamination in the last year, Genesee County Healthy Start has both the program and response infrastructure in place to immediately implement these enhanced activities.

This award will supplement, but not supplant, other federal resources currently dedicated to this effort, including activities previously funded under the current Healthy Start grant. Several federal agencies, such as the Centers for Medicare & Medicaid Services, have provided funds to organizations in Flint and Genesee County to support prevention, treatment, and remediation initiatives to address lead contamination in the community. This award should build upon, but not duplicate federal and local efforts. Activities under this award also align with existing lead response activities and involve close collaboration with broader community health system organizations, families, health professionals, local social support and health systems, community-based organizations, and early childhood systems, etc. This approach should ensure access to family-centered and comprehensive health and social services for all pregnant women and children up to age 6 years and their families impacted by lead contamination in Genesee County.

**FOR FURTHER INFORMATION CONTACT:** Robert Windom, Division of Healthy Start and Perinatal Services, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18N78, Rockville, Maryland 20852, (301) 443–8283, *RWindom@hrsa.gov.* For media inquiries, please contact *press@hrsa.gov.*

Dated: June 26, 2017.

**George Sigounas,**

*Administrator.*

[FR Doc. 2017–14274 Filed 7–6–17; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Poison Help General Population Survey, OMB Number 0915–0343, Reinstatement.

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for reinstatement of a previously approved information collection assigned OMB control number 0915–0343 that expired on May 31, 2014. Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR must be received no later than September 5, 2017.

**ADDRESSES:** Submit your request to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwor@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference, in compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

*Information Collection Request Title:* Poison Help General Population Survey, OMB Number 0915–0343, Reinstatement.

*Abstract:* HRSA is requesting approval by OMB for reinstatement of a previously approved collection of information (OMB control number 0915–0343). Annually, poison control centers (PCCs) in the U.S. manage approximately 2.8 million calls, providing ready and direct access to vital public health emergency information and response. In 2001, the Poison Help line, a single, national toll-free phone number (800–222–1222) was established to ensure universal access to PCC services, 24 hours a day, 7 days a week. The Poison Help campaign is the only national media effort to promote awareness and use of the national toll-free phone number. The Poison Help campaign aims to reach a wide audience, as individuals of all ages are at risk for poisoning and may need to access PCC services. The ''Poison Help General Population Survey'' is a 10-minute telephone survey designed to assess the Poison Help campaign's impact among 2,000 households in the United States. The survey is conducted with an adult household member and addresses topics related to the types of individuals or organizations to contact for information, advice, and treatment related to a poisoning.

*Need and Proposed Use of the Information:* Survey results will be used to guide future communication, education, and outreach efforts and will allow the tracking of longitudinal data from near-identical prior surveys conducted in 2008 and 2011. The survey has been updated to include questions regarding one of the Secretary of Health and Human Service's priority areas, addressing the opioid crisis, and definitively ascertain respondents' knowledge of the Poison Help Line and phone usage.

*Likely Respondents:* This study includes two respondent groups, individuals and households with an adult member 18 years and older.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

THE ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Number of respondents | Number of responses per respondent | Total responses | Burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Survey Respondents (Individuals) | 2,000 | 1 | 2,000 | .166 | 332 |
| Screened Households | 2,600 | 1 | 2,600 | .016 | 41.6 |
| Total | 4,600 | | 4,600 | | 374 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Jason E. Bennett,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2017–14306 Filed 7–6–17; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Senior Executive Service Performance Review Board

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HRSA, an Operating Division of HHS, is publishing a list of staff who may be named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members within HRSA for the Fiscal Year 2017 and 2018 review period.

**FOR FURTHER INFORMATION CONTACT:** Dora Ober, Executive Resources, Office of Human Resources, 5600 Fishers Lane, Rm. 12N06C, Rockville, Maryland 20857, Telephone (301) 443–0759.

**SUPPLEMENTARY INFORMATION:** Title 5, U.S.C. Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**. The following persons may be named to serve on the HRSA Performance Review Board:

Leslie Atkinson
Tonya Bowers
Adriane Burton
Tina Cheatham
Laura Cheever
Caroline Cochran
Cheryl Dammons
Elizabeth DeVoss
Diana Espinosa
Catherine Ganey
Alexandra Garcia
Richard Goodman
Heather Hauck
Avril Houston
Laura Kavanagh
Martin Kramer
Rimas Liogys
Michael Lu
James Macrae
Thomas Morris
Kerry Nesseler
Luis Padilla
Deborah Parham Hopson
Wendy Ponton

Dated: June 29, 2017.

**George Sigounas,**

*Administrator.*

[FR Doc. 2017–14221 Filed 7–6–17; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Delta States Rural Development Network Grant Program, OMB No. 0915–0386—Revision

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

**DATES:** Comments on this ICR should be received no later than August 7, 2017.

**ADDRESSES:** Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference, in compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

*Information Collection Request Title:* Delta States Rural Development Network Grant Program, OMB No. 0915–0386—Revision.

*Abstract:* The Delta States Rural Development Network Grant (Delta) Program is authorized by the Public Health Service Act, Section 330A(e) (42 U.S.C. 254c(e)), as Public Law 114–53. The Delta Program supports projects that demonstrate evidence-based and/or promising approaches around cardiovascular disease, diabetes, acute ischemic stroke, or obesity to improve health status in rural communities throughout the Delta Region. Key features of projects are adoption of an evidence-based approach, demonstration of health outcomes, program replicability, and sustainability.

*Need and Proposed Use of the Information:* For this program, performance measures include: (a) Access to care, (b) population demographics, (c) staffing, (d) sustainability, (e) project specific domains, and (f) health related clinical measures. These performance measures enable HRSA's Federal Office of Rural Health Policy to aggregate program data required under the Government Performance and Results Act of 1993 (Pub. L. 103–62). The proposed revisions to the performance measures include reducing the number of reported measures and showing annual

progress compared to baseline data submitted in the grant applications. Examples of the measures that will be removed include the number of people reached through indirect services and the number of quality improvement clinical guidelines/benchmarks adopted.

*Likely Respondents:* The respondents are the recipients of the Delta States Rural Development Network Program.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

As a result of the reduction in performance measures, annualized burden is decreasing from 72 hours to 20 hours. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Delta States Rural Development Network Program Performance Improvement Measurement System | 12 | 1 | 12 | 1.66 | 20 |
| Total | 12 | | 12 | | 20 |

**Jason E. Bennett,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2017–14305 Filed 7–6–17; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Minority Health and Health Disparities; 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Specialized Center of Excellence.

*Date:* July 26–28, 2017.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree by Hilton Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Xinli Nan, MD, Ph.D., Scientific Review Officer, National Institute on Minority Health and Health Disparities, Scientific Review Branch, OERA, 7201 Wisconsin Ave., Suite 525, Bethesda, MD 20892, (301) 594–7784, *Xinli.Nan@nih.gov*.

Dated: July 3, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–14297 Filed 7–6–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Second Stage P01 Review.

*Date:* August 3, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Jeannette L. Johnson, Ph.D., National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 3, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–14295 Filed 7–6–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

*Date:* July 27, 2017.

*Time:* 9:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Immune System Tolerance in Transplantation and Cancer.

*Date:* July 28, 2017.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* David B. Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

*Date:* August 2–3, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 2017.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–14227 Filed 7–6–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye 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:* National Eye Institute Special Emphasis Panel; NEI Pathways to Independence (K99) and Conference (R13) Grant Applications.

*Date:* July 20–21, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Anne E. Schaffner, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 29, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–14228 Filed 7–6–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR: Multidisciplinary Studies of HIV/AIDS and Aging.

*Date:* August 3, 2017.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Nutritional Regulation of Development and Metabolic Homeostasis.

*Date:* August 3, 2017.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, 301–755–4335, *greg.shelness@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 3, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–14294 Filed 7–6–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Grant (P50) Review.

*Date:* August 2, 2017.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 3, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–14296 Filed 7–6–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; Development of Multipurpose Prevention Technologies (R61/R33).

*Date:* August 3, 2017.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Brenda Lange-Gustafson, Ph.D., Scientific Review Officer NIAID/NIH/DHHS, Scientific Review Program, 5601 Fishers Lane, Room 3G13, Rockville, MD 20852, 240–669–5047, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 29, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–14229 Filed 7–6–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Issuance of Final Determination Concerning a Digital Radiography System

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of a digital radiography system, (also commonly referred to as an x-ray system), known as the Carestream DRX-Ascend Digital Radiography system. Based upon the facts presented for purposes of U.S. Government procurement, CBP has concluded that the United States is the country of origin of the fully assembled and installed DRX-Ascend Digital Radiography system.

**DATES:** The final determination was issued on June 30, 2017. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0132.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on June 30, 2017 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of a digital radiography system known as the Carestream DRX–Ascend Digital Radiography system, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H283088, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The major components of the DRX-Ascend Digital Radiography system include a Chinese-origin high-voltage generator, a U.S.-origin wireless DRX detector, a Chinese-origin elevating float-top table, a Chinese-origin tubestand, a Chinese-origin wall stand, and either a U.S. or a Japanese-origin x-ray tube. These components are combined with software that is largely developed in the United States. In the final determination, CBP concluded that the components are substantially transformed in the United States when the fully functioning digital radiography system is completely assembled and installed at an on-site location. Thus, the fully assembled digital radiography system becomes a product of the United States. Therefore, for purposes of U.S. Government procurement, the United States is the country of origin of the installed and assembled Carestream DRX-Ascend Digital Radiography system.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: June 30, 2017.

**Alice A. Kipel,**

*Executive Director, Regulations and Rulings, Office of Trade.*

**HQ H283088**

**OT:RR:CTF:VS H283088 RSD**

**CATEGORY: Origin**

Gunjan R. Talati, Esq. Kilpatrick Townsend & Stockton 607 14th Street NW. Suite 900 Washington, DC 20005–2018

**RE:** U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Digital Radiography System

Dear Mr. Talati:

This is in response to your letter of January 11, 2017, forwarded to the National Commodity Specialist Division on behalf of Carestream Health, Inc. (Carestream), requesting a final determination concerning the country of origin of a Digital Radiography System, pursuant to subpart B of Part 177, U.S. Customs and Border Protection (CBP) Regulations (19 CFR 177.21, *et seq.*). The National Commodity Specialist Division transmitted your request to the Office of

Trade, Regulations and Rulings Headquarters for a response. Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. government.

This final determination concerns the country of origin of a digital radiography system, which will be assembled on-site. As a U.S. importer, Carestream is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

**FACTS**

The product at issue is a digital radiography system known as the DRX-Ascend Digital system that is assembled in the United States from U.S. and foreign origin components. According to the information that you have provided, the DRX-Ascend Digital system is a digital radiography system (also commonly known as an x-ray system) engineered, designed, and assembled (final assembly) in the United States from seven major U.S. and foreign-origin components. The seven components are (1) a diagnostic x-ray high voltage generator; (2) wireless DRX Detector; (3) an x-ray tube; (4) a tubestand; (5) an elevating float-top table; (6) a wall stand; and, (7) Carestream Health software.

The diagnostic x-ray high-voltage generator supplies and controls the electrical energy applied to a diagnostic x-ray tube for medical/veterinary radiographic examinations. The initial manufacturing of the generator occurs in China, where Chinese components of the generator are provided by Chinese suppliers. The generator goes through two hours of processing in China to produce an unfinished generator. Carestream imports the unfinished generators into the United States. When it is imported, the generator does not contain the necessary printed circuit boards, and it also needs to be programmed. The printed circuit boards are stated to be manufactured in the United States and will be programmed using software written by a company called Quantum Manufacturing located in New York. Adding the boards to the generator and programming in the United States take roughly one hour of manufacturing time. The generator then undergoes extensive testing (approximately 6.5 hours) in the United States. You maintain that this testing is critical to the generator manufacturing process of the DRX-Ascend Digital system and must be completed before Carestream delivers the system to the customer.

The wireless DRX Detector, produced in the United States, utilizes Directview software and facilitates diagnostic exams by capturing the x-ray images and wirelessly transmitting them to a capture console that allows for immediate viewing at the capture console and manipulation. The chief benefit of instant image access is that it can reduce exam time and recall, and improves patient satisfaction. The detector is integrated into the DRX-Ascend Digital system by both hardware and software and you indicate that the detectors are made in the United States by Carestream Health or an external supplier.

The x-ray tube converts power into x-rays that ultimately produce the image required for making a diagnosis. Carestream uses two suppliers to obtain the x-ray tubes, either from Japan or the United States.

Another component of the DRX-Ascend Digital system is an elevating float-top table made in China. The tubestand component of the table is assembled in the United States and holds three different parts. One of these parts is the x-ray tube, and the other two parts are an operator panel and the collimator, all of Chinese origin. Some of the tubestands have an overhead tube crane from Germany. These parts are installed on-site at the customer's location in the United States by a U.S. service provider. The time for manufacturing the basic stand is approximately six hours in China. The tubestand is then brought into the United States for final assembly. The final assembly takes about two hours. The DRX-Ascend Digital system can include a wall stand. The wall stand is fully assembled in China.

The final element of the DRX-Ascend Digital system is the Carestream Directview software, which is initially programmed and developed in the United States. While the software build is currently performed in China, substantial portions of the software are still developed in the United States. According to your submission, two percent of the Directview software involves research and 100 percent of that research was performed in the United States. The development/writing of the software specifications and architecture involve 15 percent of the project, with 90 percent of this work being done in the United States and 10 percent completed in China. Programming of the source code involved 40 percent of the creation of the software project, with 80 percent occurring in the United States and the remaining 20 percent done in China. Two percent of the product concerns the software build, with 100 percent of the software build done in China. Testing and validation involved 40 percent of the project of the software with 50 percent of this portion of the software done in United States and 50 percent done in China. The final one percent was preparing the software/burning media for distribution, with 50 percent done in United States and 50 percent done in China. The Directview software is installed onto an HP 5810 computer in China, and that computer with the loaded software is brought to the United States. This software has two primary functions: (1) allowing the operator to select the type of medical exam and selecting the generator and x-ray tube exposure settings (the computer then coordinates the timing between the detector and firing of the x-rays), and (2) the computer and software receive the image from the detector, process the image, and deliver the finished image.

The final assembly, configuration and testing of the DRX-Ascend Digital system take place in the United States at Carestream's facilities or at its customers' sites. You describe the assembly process as consisting of nine steps before the DRX-Ascend Digital system can become a functioning x-ray system. You have provided a copy of an installation guide, which sets forth the step-by-step process of installing the DRX-Ascend Digital System at a customer's site. The installation guide consists of over 80 pages of detailed instructions for the installation technicians, describing how the DRX-Ascend Digital System is assembled and installed at an on-site location. The ancillary parts for the system from China, including the table, the wall stand, a tubestand and the computer with the Directview software loaded onto it are assembled together in the United States. The x-ray tube and generator are calibrated together in the United States so that they can work together to produce an image. The generator tube-calibration process works by having the generator send a signal to the tube, and the tube responds and fires x-rays. The tube is then removed and reinserted into the x-ray system. The generator and the detector use the same calibration process. Carestream integrates the digital detector. The x-ray tube, generator, and detector are added to the Chinese ancillary parts. The DRX-Ascend Digital system is then shipped to and installed at a customer's site. When the system is installed at the customer's site, all the components are connected and powered, at which time the DRX-Ascend Digital system becomes a functioning radiography x-ray system.

You indicate that individuals responsible for the on-site installation are either Carestream employees or Carestream dealer employees. All individuals responsible for installation receive formal classroom training through multiple courses at Carestream. The first course is a four-day-long class on x-ray fundamentals. The second course is a five-day class on Carestream's DRX systems. The third course is a certification course that is also four days and teaches the students to become proficient in installing, calibrating, and repairing the DRX-Ascend Digital system.

Some of the specialized tools and equipment that the x-ray installers use in performing the installation include a digital volt meter, x-ray measurement meter, mAS meter, dose meter, high voltage insulating kit, and ratchet hoists. You further state that it typically takes four to five days to install the system at a customer site depending on site readiness, but the system is designed for installation in four days.

**ISSUE:**

What is the country of origin of the DRX-Ascend Digital x-ray system for purposes of U.S. government procurement?

**LAW AND ANALYSIS:**

Pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American''

restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

*See also,* 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define ''U.S.-made end product'' as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative. In *Texas Instruments* v. *United States,* 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a ''mixed question of technology and customs law.''

Headquarters Ruling (HQ) H203555, dated April 23, 2012, concerned the country of origin of certain oscilloscopes. CBP considered five manufacturing scenarios. In the various scenarios, the motherboard and the power controller of either Malaysian or Singaporean origin were assembled in Singapore with subassemblies of Singaporean origin into oscilloscopes. CBP found that under the various scenarios, there were three countries under consideration where programming and/or assembly operations took place, the last of which was Singapore. CBP noted that no one country's operations dominated the manufacturing operations of the oscilloscopes. As a result, while the boards assembled in Malaysia were important to the function of the oscilloscopes, and the U.S. firmware and software were used to program the oscilloscopes in Singapore, the final programming and assembly of the oscilloscopes was in Singapore; hence, Singapore imparted the last substantial transformation, and the country of origin of the oscilloscopes was Singapore.

HQ H170315, dated July 28, 2011, concerned the country of origin of satellite telephones. CBP was asked to consider six scenarios involving the manufacture of PCBs in one country and the programming of the PCBs with second country software either in the first country or in a third country, where the phones were assembled. In the third scenario, the application and transceiver boards for satellite phones were assembled in Malaysia and programmed with U.K.-origin software in Singapore, where the phones were also assembled. CBP found that no one country's operations dominated the manufacturing operations of the phones and that the last substantial transformation occurred in Singapore. *See also* HQ H014068, dated October 9, 2007 (CBP determined that a cellular phone designed in Sweden, assembled in either China or Malaysia and shipped to Sweden, where it was loaded with software that enabled it to test equipment on wireless networks, was a product of Sweden. Once the software was installed on the phones in Sweden, they became devices with a new name, character and use: network testing equipment. As a result of the programming operations performed in Sweden, CBP found that the country of origin of the network testing equipment was Sweden).

In HQ H219597, dated April 3, 2013, ultrasound systems were engineered, designed and subject to final assembly in the United States from U.S. and foreign components. CBP noted that substantial manufacturing operations were performed in China, the United States, Korea, and Italy. The electronics module, which was partially assembled in China, was imported into the United States, where it was assembled with other core components, including Korean-origin transducers that sent and received acoustic signals, an Italian-origin monitor that displayed images, and a U.S.-origin control panel that served as the user interface. The completely assembled ultrasound systems were then uploaded with U.S. designed, developed, and written operating system software and application software. The information provided indicated that the software was necessary for the ultrasound systems to perform their intended function of providing diagnostic information (an observable image with related data). It took approximately 23–24 hours to produce the finished S2000 ultrasound system of which 13–14 hours took place in the United States. Approximately 24–25 hours of time were expended to produce the finished Antares ultrasound system of which 14–15 hours took place in the United States. In addition, the assembly, integration, and testing in the United States was conducted by specialized technicians. All of the research and development, product engineering and design investment occurred in the United States. Based on the totality of the circumstances, CBP found that the last substantial transformation occurred in the United States, the location where the final assembly and installation of the operating system software and application software occurred. Prior to the assembly and programming in the United States, the products were unable to carry out the functions of the ultrasound systems. However, the assembly and programming in the United States created a new product that was capable of providing diagnostic information. Consequently, CBP found that the country of origin of the ultrasound systems was the United States.

Similarly, in this case, it is noted that there is a significant amount of U.S. assembly involved in producing the complete x-ray system on-site. We note that Carestream has a detailed step-by-step instruction booklet for the installation technicians on how to properly install and assemble the x-ray system. We note that there are a series of complicated steps and operations that must be carefully followed in assembling the components of the x-ray system in order to make sure that the finished installed x-ray system works properly. In addition, we recognize that major safety issues could arise for future patients and operators, if the assembly and installation of an x-ray system is not done correctly. As such, the assembly requires the precise fitting, assembly, and calibration of the various components together in making the finished x-ray system. As previously noted, Carestream's technicians must undergo a series of intensive classroom training through multiple courses in order to obtain the necessary skills to be able to install and assemble the x-ray system. These technicians also use some highly specialized and sophisticated tools in completing the assembly and installation of an x-ray system.

While the x-ray system is comprised of various components mostly from China and the United States (in some cases a Japanese x-tube will be used), there is no one single component, which dominates and retains its own identity after the system is put together. We also note that while one of the more significant components, the system's high voltage generator, is of Chinese origin, it is unfinished when imported into the United States. The boards, which make the generator operational, are installed and programmed in the United States, and the finished generator undergoes significant testing in the United States before Carestream delivers the system to the customer in the United States.

Furthermore, while simply installing the U.S. developed software onto the x-ray system alone would not be sufficient to result in a substantial transformation of the foreign made components, we note that according to the information submitted, the U.S. origin software does play an integral role in the final product's proper functioning. More significantly, because a substantial assembly operation occurs in installing the x-ray system at the on-site location, more than just

loading of software is involved in making the finished x-ray systems in the United States. Until all of the components are put together into the completed system, it will not have the character of an x-ray system, and the individual components cannot carry out the functions of an x-ray system of producing radiographic images suitable for making a diagnosis. We also find it highly significant that the information provided indicates the assembly and installation of the x-ray system require a significant amount of time, in that it usually takes about 4 to 5 days on-site to complete. As in HQ H219597, after the assembly and programming of the U.S. and foreign made components are completed in the United States, the foreign made components all lose their individual identities and connected together will create a distinct new product, an x-ray system, which is capable of providing radiographic images for diagnostic purposes. Consequently, we find that a product with a new name, character, and use is produced by the operations performed in the United States to make the x-ray system, and thus the country of origin of the DRX-Ascend Digital x-ray system is the United States.

**HOLDING:**

Based on the information presented, the imported components that are used in the manufacture of the DRX-Ascend Digital x-ray system are substantially transformed as a result of the assembly operations and the software installation performed at an on-site location in the United States. Therefore, the country of origin of the DRX-Ascend Digital Radiography x-ray system for government procurement purposes is the United States.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel,

*Executive Director, Regulations and Rulings, Office of Trade*

[FR Doc. 2017–14310 Filed 7–6–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5999–N–01]**

## 60-Day Notice of Proposed Information Collection: Comment Request; Housing Discrimination Information Form; HUD–903.1, HUD–903.1A, HUD–903.1B, HUD–903.1C, HUD–903.1F, HUD–903.1CAM, HUD–903.1KOR, HUD–903.1RUS, HUD–903–1_Somali

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed extension of the currently approved information collection for Housing Discrimination Information Form HUD–903.1, HUD–903.1A, HUD–903.1B, HUD–903.1C, HUD–903.1F, HUD–903.1CAM, HUD–903.1KOR, HUD–903.1RUS, and HUD–903–1_Somali will be submitted to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act of 1995. HUD is soliciting comments from all interested parties on the proposed extension of this information collection.

**DATES:** *Comment Due Date:* September 5, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed information collection. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to Inez C. Downs, Departmental Paperwork Reduction Act Officer, QMAC, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 4186, Washington, DC 20410–2000; telephone number (202) 402–8046 (this is not a toll-free number), or email at *Inez.C.Downs@hud.gov* for a copy of the proposed forms or other available information; or to Colette Pollard, Departmental Paperwork Reduction Officer, QMAC, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 4186, Washington, DC 20410–2000; telephone number (202) 402–3400 (this is not a toll-free number), or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Hearing or speech impaired individuals may access both numbers via TTY by calling the toll-free Federal Relay Service at: 1 (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Turner Russell, Department of Housing and Urban Development, 451 7th Street SW., Room 5214, Washington, DC 20410–2000; telephone number (202) 402–6995 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at: 1 (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** HUD is submitting this proposed extension of a currently approved information collection to the OMB for review, as required by the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35, as amended].

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed extension of the collection of information regarding alleged discriminatory housing practices under the Fair Housing Act [42 U.S.C. 3601 *et seq.*]. The Fair Housing Act prohibits discrimination in the sale, rental, occupancy, advertising, and insuring of residential dwellings; and in residential real estate-related transactions; and in the provision of brokerage services, based on race, color, religion, sex, handicap [disability], familial status, or national origin.

Any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurred or terminated. HUD has designed Housing Discrimination Information Form HUD–903.1 to promote consistency in the documents that, by statute, must be provided to persons against whom complaints are filed, and for the convenience of the general public. Section 103.25 of HUD's Fair Housing Act regulation describes the information that must be included in each complaint filed with HUD. For purposes of meeting the Act's one-year time limitation for filing complaints with HUD, complaints need not be initially submitted on the Form that HUD provides. Housing Discrimination Information Form HUD–903.1 (English language), HUD–903.1A (Spanish language), HUD–903.1B (Chinese language), HUD–903.1C (Arabic language), HUD–903.1F (Vietnamese language), HUD–903.1CAM (Cambodian language), HUD–903.1KOR (Korean language), HUD–903.1RUS (Russian language), and HUD–903–1_(Somali language) may be submitted to HUD by mail, in person, by facsimile, by email, or via the Internet to HUD's Office of Fair Housing and Equal Opportunity (FHEO). FHEO staff uses the information provided on the Form to verify HUD's authority to investigate the

aggrieved person's allegations under the Fair Housing Act.

**A. Overview of Information Collection**

*Title of Information Collection:* Housing Discrimination Information Form.

*OMB Control Number:* 2529–0011.

*Type of Request:* Extension of a currently approved information collection.

*Form Number:* HUD–903.1.

*Description of the need for the information and proposed use:* HUD uses the Housing Discrimination Information Form HUD–903.1 (Form) to collect pertinent information from persons wishing to file housing discrimination complaints with HUD under the Fair Housing Act. The Fair Housing Act makes it unlawful to discriminate in the sale, rental, occupancy, advertising, or insuring of residential dwellings; or to discriminate in residential real estate-related transactions; or in the provision of brokerage services, based on race, color, religion, sex, handicap [disability], familial status, or national origin.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurs or terminates. The Form promotes consistency in the collection of information necessary to contact persons who file housing discrimination complaints with HUD. It also aids in the collection of information necessary for initial assessments of HUD's authority to investigate alleged discriminatory housing practices under the Fair Housing Act. This information may subsequently be provided to persons against whom complaints are filed [''respondents''], as required under section 810(a)(1)(B)(ii) of the Fair Housing Act.

*Agency form numbers, if applicable:* Form HUD–903.1 (English), Form HUD–903.1A (Spanish), Form HUD–903.1B (Chinese), Form HUD–903.1C (Arabic), Form HUD–903.1F (Vietnamese), Form HUD–903.1CAM (Cambodian), Form HUD–903.1KOR (Korean), Form HUD–903.1RUS (Russian), and Form HUD–903–1_(Somali).

*Members of affected public:* Individuals or households; businesses or other for-profit, not-for-profit institutions; State, Local, or Tribal Governments.

*Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of responses:* During FY 2016, HUD staff received approximately 14,216 information submissions from persons wishing to file housing discrimination complaints with HUD. Telephone contacts accounted for 1,548 of this total. The remaining 12,668 complaint submissions were transmitted to HUD by mail, in-person, by email, and via the Internet. HUD estimates that an aggrieved person requires approximately 45 minutes in which to complete this Form. The Form is completed once by each aggrieved person. Therefore, the total number of annual burden hours for this Form is 9,501 hours.

12,668 × 1 (frequency) × .45 minutes (.75 hours) = 9,501 hours.

*Annualized cost burden to complainants:* HUD does not provide postage-paid mailers for this information collection. Accordingly, persons who choose to submit this Form to HUD by mail must pay the prevailing cost of First Class Postage. As of the date of this Notice, the annualized cost burden per person, based on a one-time submission of this Form to HUD via First Class Postage, is Forty-Nine Cents ($0.49) per person. During FY 2016, FHEO staff received approximately 3,450 submissions of potential complaint information by mail. Based on this number, HUD estimates that the total annualized cost burden for aggrieved persons who submit this Form to HUD by mail is $1,690.50. Aggrieved persons also may submit this Form to HUD in person, by facsimile, by email, or electronically via the Internet.

*Status of the proposed information collection:* Renewal of a currently approved collection of pertinent information from persons wishing to file Fair Housing Act complaints with HUD.

**B. Solicitation of Public Comments**

This Notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 3, 2017.

**Lynn M. Grosso,**

*Director, Office of Enforcement, FHEO.*

[FR Doc. 2017–14300 Filed 7–6–17; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5997–N–34]**

## 30-Day Notice of Proposed Information Collection: Appalachia Economic Development Initiative

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date: August 7, 2017.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is

seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 7, 2017 at 82 FR 17026.

**A. Overview of Information Collection**

*Title of Information Collection:* Appalachia Economic Development Initiative.

*OMB Approval Number:* 2506–0201.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* SF 424; HUD 424CB; HUD 424–CBW; SF–LLL; HUD 2990; HUD 2991; HUD 2993; HUD 2994A; HUD 27061; and HUD 27300.

*Description of the need for the information and proposed use:* The purpose of this submission is for the application for the Appalachia Economic Development Initiative grant process. Information is required to rate and rank competitive applications and to ensure eligibility of applicants for funding. Semi-annual reporting is required to monitor grant management.

*Respondents* (*i.e.* affected public): 50.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses:* 50.

*Frequency of Response:* 1.

*Average Hours per Response:* .76.

*Total Estimated Burdens:* 527.5.

*Total Estimated Burdens:* 527.5.

ESTIMATED BURDEN

| Instruments | Respondents | Annual responses | Total responses | Burden per response | Total annual hours | Hourly rate ** | Burden cost per instrument |
|---|---|---|---|---|---|---|---|
| HUD–424CB | 50 | 1 | 50 | 2.60 | 130.00 | 31.82 | $4,136.60 |
| HUD–424CBW–I | 50 | 1 | 50 | 3.20 | 160.00 | 31.82 | 5,091.20 |
| HUD–2990 | 50 | 1 | 50 | 0.00 | 0.00 | 00.00 | 00.00 |
| HUD–2991 | 50 | 1 | 50 | 0.00 | 0.00 | 00.00 | 00.00 |
| HUD–2993 | 50 | 1 | 50 | 0.00 | 0.00 | 00.00 | 00.00 |
| HUD–2994A | 50 | 1 | 50 | 0.50 | 25.00 | 31.82 | 790.50 |
| HUD–27061 | 50 | 1 | 50 | 1.25 | 62.50 | 31.82 | 1,975.25 |
| HUD–27300 | 50 | 1 | 50 | 3.00 | 150.00 | 31.82 | 4,773.00 |
| Total | | | | 1.32 | 527.50 | 31.82 | 16,766.82 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 21, 2017.

**Anna P. Guido,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2017–14291 Filed 7–6–17; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5997–N–16]**

## 30-Day Notice of Proposed Information Collection: Affirmative Fair Housing Marketing Plan

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice solicits public comment for a period of 30 days, consistent with the Paperwork Reduction Act of 1995 (PRA), on the Affirmative Fair Housing Marketing Plan (AFHMP) forms. On December 5, 2016, HUD solicited public comment for a period of 60 days on the AFHMP forms. The 60-day notice commenced the notice and comment process required by the PRA in order to obtain approval from the Office of Management and Budget (OMB) for the information proposed to be collected by the AFHMP forms. This 30-day notice takes into consideration the public comment received in response to the 60-day notice, and completes the public comment process required by the PRA. With the issuance of this notice, and following consideration of additional public comments received in response to this notice, HUD is complying with the PRA renewal requirements, and the forms will undergo the public comment process every 3 years to retain OMB approval.

**DATES:** *Comment Due Date:* August 7, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA Submission @omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** *Inez.C.Downs@hud.gov* or telephone 202–402–8046. This not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Comments should follow the

instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling QDAM at 202–402–3400 (this is not a toll free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

**SUPPLEMENTARY INFORMATION:**

**The 60-Day Notice for the AFHMP Forms**

On December 5, 2016, at 81 FR 87581, HUD published its 60-day notice, the first notice for public comment required by the PRA, to commence the process for renewal of the AFHMP Forms. The 60-day public comment period ended on February 3, 2017, and HUD received one public comment. The following section, Section A, responds to the issues raised by the public commenter, and Section B provides HUD's estimation of the burden hours associated with the AFHMP forms, and further solicits issues for public comment which are required to be solicited by the PRA.

**Submission Requirements**

Under the AFHM Regulations (24 CFR part 200, subpart M), all applicants for participation in Federal Housing Administration (FHA) subsidized and unsubsidized housing programs that involve the development or rehabilitation of multifamily projects or manufactured home parks of five or more lots, units, or spaces must submit an AFHM Plan on a prescribed form. In addition, all applicants for participation in FHA subsidized and unsubsidized housing programs that involve the development or rehabilitation of single family housing or condominium or cooperative units that intend to sell five or more properties in the next year, or sold five or more properties in the past year, and where a lender is submitting initial applications for HUD mortgage insurance, must submit one of several agreements or statements, among which is an AFHM Plan on a prescribed form.

*A. Public Comment on the AFHMP Forms and HUD's Responses*

Comments

The commenter stated that the single-family form 935.2B is ineffective because the form cannot be used for activities occurring outside of a fixed census tract. The commenter suggests that the form be revised to contemplate activities that offer tenants a choice in housing location such as Tenant Based Rental Assistance or down payment assistance. The commenter further stated that the AFHMP forms should include the 16 racial categories reported to HUD as required by the Housing and Economic Recovery Act of 2008.

*HUD response:* HUD appreciates the commenter's views and input. HUD notes that the forms were not intended for use for tenant-based rental assistance and down payment assistance programs and declines to make revisions to allow for the use of the forms for such programs at this time. In regard to the commenter's concern that the form does not include all 16 racial categories that are reported to HUD under other programs, HUD notes that the form includes the five minimum racial categories required by OMB for the collection and presentation of federal data on race. The Department declines to add the additional racial categories at this time.

*B. Overview of Information Collection*

Under the PRA, HUD is required to report the following:

*Title of Information Collection:* Affirmative Fair Housing Marketing Plan.

*OMB Approval Number:* 2529–0013.

*Type of Request:* Reinstatement without change, of previously approved collection for which approval has expired.

*Form Number:* HUD–935.2A, 935.2B, 935.2C.

*Description of the need for the information and proposed use:* The Department of Housing and Urban Development (HUD) is requesting that the Office of Management and Budget (OMB) approve the extension of forms: HUD–935.2A Affirmative Fair Housing Marketing Plan—Multifamily Housing, HUD–935.2B Affirmative Fair Housing Marketing Plan—Single Family Housing, and HUD–935.2C Affirmative Fair Housing Marketing Plan—Condominiums or Cooperatives. These forms assist HUD in fulfilling its duty under the Fair Housing Act to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing, by promoting a condition in which individuals of similar income levels in the same housing market area have available to them a like range of housing choices, regardless of race, color, national origin, religion, sex, disability, or familial status. This collection also promotes compliance with Executive Order 11063, which requires Federal agencies to take all necessary and appropriate action to prevent discrimination in federally insured and subsidized housing. Under the AFHM Regulations (24 CFR part 200, subpart M), all applicants for participation in Federal Housing Administration (FHA) subsidized and unsubsidized housing programs that involve the development or rehabilitation of multifamily projects or manufactured home parks of five or more lots, units, or spaces must submit an AFHM Plan on a prescribed form. In addition, all applicants for participation in FHA subsidized and unsubsidized housing programs that involve the development or rehabilitation of single family housing or condominium or cooperative units that intend to sell five or more properties in the next year, or sold five or more properties in the past year, and where a lender is submitting initial applications for HUD mortgage insurance, must submit one of several agreements or statements, among which is an AFHM Plan on a prescribed form. If this information was not collected, it would prevent HUD from ensuring compliance with affirmative fair housing marketing requirements.

*Respondents:* Applicants for FHA subsidized and unsubsidized housing programs.

*Estimated Number of Respondents:* 8,080 (HUD 935.2A: On an annual basis, there are approximately 300 respondents that submit new plans, 4,030 respondents that review their existing plans and submit updated plans, and 3,720 respondents that review their existing plans, but are not required to submit updated plans. HUD 935.2.B & C: On an annual basis, there are approximately 30 respondents that submit new plans.)

*Estimated Number of Responses:* 8,080.

*Frequency of Response:* 1 per annum.

*Average Hours per Response:* The average hours per response is 3.16 hours. (For the HUD–935.2A, the hours per response are: 6 hours (new plans), 4 hours (review and update plans), and 2 hours (review of existing plans only).

For the 935.2B & C, the hours per response is 6 hours).

*Total Estimated Burdens:* 25,540 hours.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| HUD–935.2A (MFH). | 8,050 | 1 | 8,050 | New 6 × 300<br>Review Only 2 × 3,720.<br>Review & Update 4 × 4,030. | New 1,800<br>Reviews Only 7,440.<br>Review & Update 16,120. | *Respondents:*<br>$35/hour (professional work).<br>$16/hour (clerical work)<br>$1.25 per report mailing<br>*Government:*<br>$38.56/hour[1] (professional work)..<br>$17.55/hour[2] (clerical work). | *Respondents:*<br>New = ($35 × 4 × 300) + ($16 × 2 × 300) = $51,600.<br>Reviews = ($35 × 2 × 3,720) = $260,400.<br>Updates = ($35 × 2 × 4,030) + ($16 × 2 × $4,030) = $411,060.<br>Mailing Costs = $1.25 × 4,330 = $5,412.50.<br>Annual Cost = $51,600 + $260,400 + $411,060 + $5,412.50 = $728,472.50.<br>*Government:*<br>New = ($38.56 × 3 × 300) + ($17.55 × 0.5 × 300) = $37,336.50.<br>Reviews & Updates = ($38.56 × 3 × 4,030) + ($17.55 × 0.5 × $4,030) = $501,553.65.<br>Annual Cost = $37,336.50 + $501,553.65 = $538,890.15. |
| HUD–935.2B (SFH) & C (Condos and Co-Ops). | 30 | 1 | 30 | 6 | 180 | *Respondents:*<br>$35/hour (professional work).<br>$16/hour (clerical work)<br>$1.25 per report mailing<br>*Government:*<br>$38.56/hour (professional work).<br>$17.55/hour (clerical work). | *Respondents:*<br>($35 × 4 × 30) + ($16 × 2 × 30) = $5,160.<br>$1.25 × 30 = $37.50.<br>Annual Cost = $5,160 + $37.50 = $5,197.50.<br>*Government:*<br>Annual Cost = ($38.56 × 3 × 30) + ($17.55 × 0.5 × 30) = $3,733.65. |
| Total | 8,080 | 1 each | 8,080 | Avg. of 3.16 | 25,540 | Avg. of $28.73 | *Respondents:* $733,670.<br>*Government:* $542,623.80. |

*B. Solicitation of Public Comment*

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 3, 2017.

**Inez C. Downs,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2017–14289 Filed 7–6–17; 8:45 am]

**BILLING CODE 4210–67–P**

[1] Rate for GS 12 Step 5 ($38.56/hour) based on the salary information available on *OPM.gov.*

[2] Rate for GS 5 step 5 ($17.55/hour) based on the salary information available on *OPM.gov.*

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5997–N–17]**

## 30-Day Notice of Proposed Information Collection: Implementation of the Housing for Older Persons Act of 1995 (HOPA)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date: August 7, 2017.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*

**FOR FURTHER INFORMATION, CONTACT:** Inez C. Downs, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Inez C. Downs at *Inez.C.Downs@hud.gov* or telephone 202–402–8046. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-

free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Downs.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 13, 2016 at 81 FR 89964.

**A. Overview of Information Collection**

*Title of Information Collection:* Implementation of the Housing for Older Persons Act of 1995 (HOPA).

*OMB Approval Number:* 2529–0046.

*Type of Request:* Extension without change of a currently approved collection.

*Form Number:* None.

*Description of the need for the information and proposed use:* The Fair Housing Act [42 U.S.C.3601 *et seq.*], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on familial status (individuals living in households with one or more children under 18 years of age). However, under § 3607(b)(2) of the Act, Congress exempted three (3) categories of ''housing for older persons'' from liability for familial status discrimination: (1) Housing provided under any State or Federal program which the Secretary of HUD determines is ''specifically designed and operated to assist elderly persons (as defined in the State or Federal program)''; (2) housing ''intended for, and solely occupied by persons 62 years of age or older''; and (3) housing ''intended and operated for occupancy by at least one person 55 years of age or older per unit ['55 or older' housing].'' In December 1995, Congress passed the Housing for Older Persons Act of 1995 (HOPA) [Public Law 104–76, 109 STAT. 787] as an amendment to the Fair Housing Act. The HOPA modified the ''55 or older'' housing exemption provided under § 3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer ''*significant facilities and services specifically designed to meet the physical or social needs of older persons.*'' In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1) *At least 80 percent of the occupied units* in the community or facility must be occupied by at least one person who is 55 years of age of older; (2) the housing provider must publish and adhere to policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with ''rules issued by the Secretary for verification of occupancy, which shall . . . provide for [age] verification by reliable surveys and affidavits.''

The HOPA did not significantly increase the record-keeping burden for the ''55 or older'' housing exemption. It describes in greater detail the documentary evidence which HUD will consider when determining, in the course of a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the ''55 or older'' housing exemption as of the date of the alleged Fair Housing Act violation.

The HOPA information collection requirements are necessary to demonstrate a housing provider's eligibility to claim the ''55 or older'' housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental, or occupancy of dwelling units situated in qualified senior housing facilities or communities. The HOPA's requirement that a housing provider must demonstrate the intent to operate a ''55 or older'' housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a ''55 or older'' housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA's ''*80 percent occupancy*'' requirement, and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions, and should require minimal preparation time. Further, a senior housing provider's operating rules, policies and procedures are not privileged or confidential in nature, because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information would be protected from disclosure unless the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD under the Fair Housing Act. HUD's Office of Fair Housing and Equal Opportunity will only require a housing provider to disclose such confidential information to HUD if and when HUD investigates a jurisdictional familial status discrimination complaint filed against the housing provider under the Fair Housing Act, and if and when the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to the complaint.

*Members of affected public:* The HOPA requires that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older must routinely collect and update reliable age verification information necessary to meet the eligibility criteria for the HOPA exemption. The record keeping requirements are the responsibility of the housing provider that seeks to qualify for the HOPA exemption.

*Estimation of the total numbers of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response:* The HOPA information collection requirements are the responsibility of the individual housing facility or community that claims eligibility for the HOPA's ''55 or older'' housing exemption. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a means of certifying that their housing communities or facilities qualify for the exemption. Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities would seek to qualify for the HOPA exemption. HUD estimated the occupancy/age verification data would require routine

updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10) transactions per community.

HUD concluded that the publication of policies and procedures is likely to be a one-time event, and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

Please see table below.

| Type of collection activity | Number of respondents | Frequency of response | Total annual responses hours | Burden hour per response | Total annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| *One:* Publication of and adherence to policies and procedures that demonstrate the intent to operate as 55-or-older housing ..... | 1,000 | 1 | 1,000 | 2 | 2,000 | $21.30 | $42,600.00 |
| *Two:* Collect age verification data for at least one occupant per unit to meet the HOPA's minimum "80" requirement ..... | 1,000 | 1 | 1,000 | 1 | 1,000 | 21.30 | 21,300.00 |
| *Three:* Periodic updates of occupancy records | 1,000 | 1 | 1,000 | 2.50 | 2,500 | 21.30 | 53,250.00 |
| Total Burden Hours and Costs ..... | ..... | ..... | 3,000 | ..... | 5,500 | ..... | 117,150.00 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including using appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 3, 2017.

**Inez C. Downs,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2017–14299 Filed 7–6–17; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5997–N–33]**

## 30-Day Notice of Proposed Information Collection: Delta Community Capital Initiative

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* August 7, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 7, 2017 at 82 FR 17027.

**A. Overview of Information Collection**

*Title of Information Collection:* Delta Community Capital Initiative.

*OMB Approval Number:* 2506–0200.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* SF 424; HUD 424CB; HUD 424–CBW; SF–LLL; HUD 2990; HUD 2991; HUD 2993; HUD 2994A; HUD 27061; and HUD 27300.

*Description of the need for the information and proposed use:* The purpose of this submission is for the application for the Delta Community Capital Initiative grant process. Information is required to rate and rank competitive applications and to ensure eligibility of applicants for funding.

Semi-annual reporting is required to monitor grant management.

*Respondents (i.e. affected public):* 50.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses:* 50.

*Frequency of Response:* 1.

*Average Hours per Response:* .76.

*Total Estimated Burdens:* 527.5.

ESTIMATED BURDEN

| Instruments | Respondents | Annual responses | Total responses | Burden per response | Total annual hours | Hourly rate ** | Burden cost per instrument |
|---|---|---|---|---|---|---|---|
| HUD–424CB | 50 | 1 | 50 | 2.60 | 130.00 | $31.82 | $4,136.60 |
| HUD–424CBW–I | 50 | 1 | 50 | 3.20 | 160.00 | 31.82 | 5,091.20 |
| HUD–2990 | 50 | 1 | 50 | 0.00 | 0.00 | 00.00 | 00.00 |
| HUD–2991 | 50 | 1 | 50 | 0.00 | 0.00 | 00.00 | 00.00 |
| HUD–2993 | 50 | 1 | 50 | 0.00 | 0.00 | 00.00 | 00.00 |
| HUD–2994A | 50 | 1 | 50 | 0.50 | 25.00 | 31.82 | 790.50 |
| HUD–27061 | 50 | 1 | 50 | 1.25 | 62.50 | 31.82 | 1,975.25 |
| HUD–27300 | 50 | 1 | 50 | 3.00 | 150.00 | 31.82 | 4,773.00 |
| Total | | | | 1.32 | 527.50 | 31.82 | 16,766.82 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 21, 2017.

**Anna P. Guido,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2017–14298 Filed 7–6–17; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2017–N083; FXES11140200000–178–FF02ENEH00]**

### Notice of Availability of a Draft Candidate Conservation Agreement, Draft Candidate Conservation Agreements With Assurances, and Draft Environmental Assessment for Activities Within Eddy County, New Mexico, and Culberson County, Texas

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** This notice advises the public that the Center of Excellence in Hazardous Material Management (CEHMM; applicant) and the New Mexico State Land Office (NMSLO, applicant) have applied to the Fish and Wildlife Service (Service) for two separate enhancement of survival permits pursuant to the Endangered Species Act of 1973, as amended (Act). The permit application includes draft programmatic candidate conservation agreement with assurances (CCAA) for the Texas hornshell and other covered species (the Rio Grande River cooter, gray redhorse, blue sucker, and Pecos springsnail) in west Texas and southeast New Mexico. A separate permit application includes a draft programmatic candidate conservation agreement with assurances (CCAA) for the Texas hornshell and other covered species (the Rio Grande River cooter, gray redhorse, blue sucker, and Pecos springsnail) that is valid only on New Mexico State trust lands. Additionally, the Service received a draft candidate conservation agreement (CCA) for the Texas hornshell and the other covered species from the Bureau of Land Management (BLM) that would address threats to these species on Federal land in southeastern New Mexico. The CCAAs, and associated permits, would authorize incidental take resulting from voluntary activities to restore, maintain, enhance, or create habitat for the covered species. The Service also announces the availability of a draft environmental assessment (EA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act. We are making the permit application packages, including the draft CCA, draft CCAAs, and draft EA, available for public review and comment.

**DATES:** We will accept comments received or postmarked on or before August 7, 2017. Any comments we receive after the closing date or not postmarked by the closing date may not be considered in the final decision on this action.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4012, Albuquerque, NM 87103, or by emailing *fw2_hcp_permits@fws.gov.*

Obtaining Documents:

- *Internet:* You may obtain copies of the draft EA, draft CCA, and draft CCAA on the U.S. Fish and Wildlife Service's (Service) Web site at *https://www.fws.gov/southwest/es/newmexico.*
- *U.S. Mail:* A limited number of CD–ROM and printed copies of the draft EA, draft CCA, and draft CCAA are available, by request, from the Field Supervisor, by mail at New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113; by phone at 505–346–2525; or by fax at 505–346–2542. Please note that your request is in reference to the draft Candidate

Conservation Agreement and Candidate Conservation Agreement with Assurances for the Texas Hornshell.

- *In-Person:* Copies of the draft EA, draft CCA, and draft CCAA are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:
  - U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.
  - U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113.

*Comment submission:* You may submit comments by one of the following methods.

- *U.S. Mail:* New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113; by phone at 505–346–2525; or by fax at 505–346–2542.
- *Email: fw2_nm_es@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Debra Hill, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113; by telephone 505–346–2525; or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** This notice advises the public that the Center of Excellence in Hazardous Material Management (CEHMM; applicant) and the New Mexico State Land Office (NMSLO, applicant) have each applied to the Service for enhancement of survival permits pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act). The permit applications include draft CCAAs for the Texas hornshell (a mussel species) and other covered species (the Rio Grande River cooter, a turtle species; gray redhorse and blue sucker, two fish species; and the Pecos springsnail) in west Texas and southeast New Mexico. The CCAAs and associated permits would authorize incidental take resulting from voluntary activities to restore, maintain, enhance, or create habitat for these species. Additionally, the Service received a draft CCA for the Texas hornshell and the other covered species from the Bureau of Land Management (BLM). The Service also announces the availability of a draft EA that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.;* NEPA). We are making the permit application packages, including the draft CCA, draft CCAAs, and draft EA, available for public review and comment.

## Background

Private and non-Federal property owners are encouraged to enter into the CCAA through CEHMM; participants with leased acres on NMSLO lands are encouraged to enter into the CCAA through the NMSLO; and Federal agencies, permittees, and lessees are encouraged to enter into the CCA. Through the CCAAs and CCA the participants voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species that are proposed for listing under the ESA, candidates for listing, or species that may become candidates or proposed for listing. Enhancement of survival (EOS) permits are issued to the applicants in association with approved CCAAs to authorize incidental take of the covered species from covered activities, should the species become listed. Through the CCAAs and their associated EOS permits, the Service provides assurances to property owners that they will not be subjected to increased land use restrictions if the covered species become listed under the ESA in the future, provided certain conditions are met. Although there are no assurances associated with the CCA, enrollees have a high degree of certainty that they will not be subject to increased land use restrictions by the Service if the covered species become listed under the ESA in the future.

Application requirements and issuance criteria for EOS permits for CCAAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(d)(2)(ii) and 17.32(d)(2)(ii), respectively. See also the joint policy on CCAAs, which was published in the **Federal Register** with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (80 FR 95164; December 27, 2016).

## Proposed Action

The proposed action involves the issuance of two section 10(a)(1)(A) EOS permits by the Service to the applicants and approval of the proposed programmatic CCA and CCAAs to facilitate recovery activities on Federal and non-Federal lands in west Texas and southeastern New Mexico for the benefit of the proposed endangered species candidate Texas hornshell and other covered sensitive species (the Rio Grande River cooter, gray redhorse, blue sucker, and Pecos springsnail). The other covered species inhabit the same habitat and benefit from similar conservation measures as the Texas hornshell. The proposed term of the permits is 30 years.

The proposed CCAAs would implement conservation measures that contribute to the recovery of the Texas hornshell and the other covered species. The proposed agreements would include the Service, CEHMM, and participants in the private lands CCAA, or the Service, NMSLO, and participants in the State lands office CCAA. CEHMM or NMSLO would hold separate EOS permits and enroll participants, who would hold individual certificates of inclusion (CI). Participants in the CCAAs may include landowners, oil and gas operators, commercial/agricultural water withdrawers, and livestock producers that hold leases, permits, or other authorizations on private or State lands. The EOS permits' authorization of ''take'' would become effective if any of the species become listed, as long as the enrolled landowner is in compliance with the terms and conditions of the respective CCAA, their CI, and the EOS permit. The CCAAs, the EOS permits, and the CIs would provide incentives for non-Federal property owners to participate in conservation efforts for the Texas hornshell and the other covered species.

The CCAAs are part of a larger conservation effort for the Texas hornshell and the covered species within New Mexico that includes the CCA among the Service, the Bureau of Land Management, CEHMM, and participants that address conservation measures for the same species on Federal land. Participants in the CCA each hold an individual certificate of participation (CP) and include oil and gas operators, commercial/agricultural water withdrawers, livestock producers, Carlsbad Irrigation District, and other interested stakeholders that hold Federal leases, permits, or other authorizations. The CCA cannot include an EOS permit, and therefore, any enrolled Federal land management agency is not authorized for incidental take of the covered species in the event a listing occurs, and no assurances are provided by the Service to Federal land management agencies. Instead, if any of the covered species are listed under the Act, incidental take will be provided under a biological opinion, granting the participants a high degree of certainty that additional conservation measures or limitations, above those contained in the CCA and individual CPs, will not be imposed upon them should one or more

of the species become listed in the future.

We have worked with the applicants to design conservation activities expected to have a net conservation benefit to the covered species within the covered area; however, landowners and enrollees would not have to conduct every activity in this list in order for their actions to have a net conservation benefit on the covered species. Each participant will need to follow their individual CIs or CPs and the conservation measures included within. Some examples of these conservation actions include the following: (1) Prevent new surface disturbance in habitat occupied by the Texas hornshell within the Black and Delaware Rivers; (2) Avoid new development within the Black and Delaware Rivers, Blue Springs, and their associated U.S. Geological Survey (USGS) 100-year floodplain; (3) Site new projects to take advantage of existing and available infrastructure; (4) Avoid obstructing or disrupting the natural flow of ephemeral drainages to the Black and Delaware Rivers; (5) Implement erosion control measures; (6) Avoid water withdrawal in habitat occupied by the Texas hornshell within the Black and Delaware Rivers; (7) Maintain minimal stream flows and cease withdrawal of water within the Black and Delaware Rivers if stream flows reach minimum levels; (8) Avoid using low-water crossings when other routes are available; (9) Clear invasive shrubs and replant with native plants in areas adjacent to occupied sites; and (10) Buy or lease water rights during periods of low flow to maintain minimal stream flows.

## Alternatives

We considered four alternatives to the proposed action as part of the environmental assessment process—the No Action Alternative; Development of a CCA only Alternative; Development of a CCAA only Alternative; and, Development of a CCA and CCAA (covering both private and State lands). Under the No Action Alternative, a coordinated effort to conserve the covered species on non-Federal properties using a programmatic CCA and CCAA would not occur. Under the CCA only and the CCAA only alternatives, conservation would only be coordinated on either non-Federal or Federal lands rather than having a coordinated effort across the Black and Delaware Rivers. Under the CCA and CCAA alternative, conservation would be the same as the proposed action; however, State lands and private lands would be enrolled in the same CCAA.

## Next Steps

We will evaluate the permit applications, associated documents, and comments we receive to determine whether the permit application meets the requirements of the Act, National Environmental Policy Act (NEPA), and implementing regulations. If we determine that all requirements are met, we will sign the proposed CCAAs, issue EOS permits under section 10(a)(1)(A) of the Act to CEHMM and the NMSLO for take of Texas hornshell and the other covered species in accordance with the terms of the CCAAs and specific terms and conditions of the authorizing permits, and sign the proposed CCA with BLM. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

## Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representative or officials of organizations or businesses, will be made available for public disclosure in their entirety.

## Authority

We provide this notice under section 10(c) of the Act and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

**Benjamin N. Tuggle,**

*Regional Director, Southwest Region, Albuquerque, New Mexico.*

[FR Doc. 2017–14235 Filed 7–6–17; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLORN00100.L63340000.PH0000. 17XL1116AF.LXSSH1020000.HAG 17–0116]**

### Public Meeting for the Northwest Oregon Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Northwest Oregon Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The Northwest Oregon RAC will hold a public meeting on Wednesday, July 26, 2017, from 9 a.m. to 5 p.m., Pacific Daylight Time.

**ADDRESSES:** The Northwest Oregon RAC will meet at the BLM Springfield Interagency Office, 3106 Pierce Parkway, Springfield, OR 97477.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Velez, Public Affairs Officer, 1717 Fabry Road SE., Salem, OR 97306; 541–222–9241; *jvelez@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1(800) 877–8339 to contact the above individuals during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 15-member Northwest Oregon RAC was chartered to serve in an advisory capacity concerning the planning and management of the public land resources located within the BLM's Northwest Oregon District. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide. All advisory council meetings are open to the public. Persons wishing to make comments during the public comment period should register in person with the BLM, at the meeting location, preceding that meeting day's comment period. At the July 26 meeting, members will consider and make recommendations on the reallocation of Secure Rural Schools Title II funds. Other topics will include general updates, a review of subcommittee and future field trip opportunities, and likely a presentation by the Association of Oregon Counties pertaining to the Oregon and California Railroad

Revested Lands (O&C) Act and access related issues. Members of the public will have the opportunity to make comments to the RAC during a public comment period at 11:45 a.m.

Written comments may be sent to the Northwest Oregon District office, 1717 Fabry Road SE., Salem, OR 97306. Before including your address, phone number, email address, or other personal identifying information in your comments, please 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:** 43 CFR 1784.4–2

**Jose L. Linares,**

*Northwest Oregon District Manager.*

[FR Doc. 2017–14342 Filed 7–6–17; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWYD01000 L13140000.NB0000 17X]**

### Notice of Availability of the Draft Environmental Impact Statement for the Normally Pressured Lance Natural Gas Development Project

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**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) has prepared a Draft Environmental Impact Statement (Draft EIS) for the proposed Normally Pressured Lance (NPL) natural gas development project within the BLM Pinedale and Rock Springs Field Offices and by this notice is announcing the opening of the comment period.

**DATES:** To ensure that comments will be considered, the BLM must receive written comments on the NPL Draft EIS within 45 days following the date the Environmental Protection Agency publishes the notice of availability of the NPL Draft EIS in the **Federal Register**. The BLM will announce future meetings or any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

**ADDRESSES:** You may submit comments related to the NPL Draft EIS by any of the following methods:

- *Email: blm_wy_npl_eis@blm.gov*
- *Mail:* NPL EIS Project Manager, BLM Pinedale Field Office, P.O. Box 768, Pinedale, WY 82941

Copies of the NPL Draft EIS are available at the Pinedale Field Office at the following locations:

BLM Pinedale Field Office, 1625 West Pine Street, Pinedale, WY 82941

or

BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, WY 82901

or on the project Web site at: *http://tinyurl.com/hloulms.*

**FOR FURTHER INFORMATION CONTACT:** Susan (Liz) Dailey—NPL EIS Project Manager, BLM Pinedale Field Office, P.O. Box 768, Pinedale, WY 82941, 307–367–5310, *sdailey@blm.gov.* Persons who use telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The NPL project is located immediately south and west of the existing Jonah Gas Field in Sublette County, Wyoming. The project area lies within the BLM Wyoming High Desert District and spans the Pinedale Field Office (PFO) in the north and the Rock Springs Field Office (RSFO) to the south. The project encompasses approximately 141,000 acres of public, state, and private lands. Approximately 96% of the project area is on public lands. Within the NPL project area, there are both unitized and non-unitized development areas.

There are approximately 48,036 acres of Greater sage-grouse Priority Habitat Management Area (PHMA) within the NPL project area (405 acres within the PFO and 47,631 acres within the RSFO). There are approximately 92,825 acres of General Habitat Management Area in the NPL project area (78,228 within the PFO and 14,597 within the RSFO). There are 27,292 acres (26,392 on BLM-administered lands) of Greater sage-grouse Winter Concentration Area (WCA) within the NPL. These are divided into two distinct WCAs: Alkali Creek, consisting of 20,132 acres (19,232 on BLM-administered lands), and Alkali Draw, consisting of 7,160 acres (all on BLM-administered lands). These WCAs are found in the western and northern portions of the project area, respectively. There are approximately 1,259 acres of Sagebrush Focal Areas (SFAs) within the NPL project area. All of the SFAs are within the RSFO.

Jonah Energy LLC, the current operator after purchasing Encana Oil and Gas Inc.'s leasehold interest in the project, is proposing up to 3,500 directionally drilled wells (depth range from 6,500 to 13,500 feet) over a 10-year period (Proposed Action). Under Jonah Energy's proposal, most wells would be co-located on a single pad, with no more than four well pads per 640 acres in areas outside of PHMA. There would be only one disturbance per 640 acres inside PHMA. On average, each well pad would be 18 acres in size. Regional gathering facilities would be used instead of placing compressors at each well pad. Associated access roads, pipelines, and other ancillary facilities would be co-located where possible to further minimize surface disturbance.

In addition to the Proposed Action, the BLM analyzed three other alternatives: The No Action Alternative, using existing standard stipulations and examining the project area under the historical rate of development of around three wells per year; Alternative A, using a phased approach moving through existing leased oil and gas units and responding to identified wildlife issues; and Alternative B, which addressed a broadrange of resource concerns in response to issues identified during scoping.

Alternatives A and B each analyzed the same rate of development as the Proposed Action as well as the use of regional gathering facilities. However, in addition to varying resource protection measures, each alternative analyzed differing densities of development—from one to four multi-well pads per 640 acres, depending on the resource considerations of the project area. Additionally, Alternative A analyzed the merits of developing the project area in phases. Phased development across the project area analyzed development in three geographically defined phases, occurring sequentially, and taking into consideration existing oil and gas units.

Interim and final reclamation activities would be implemented under all alternatives so as to return the landscape to proper biological and ecological function in conformance with the NPL Reclamation Plan and the relevant Resource Management Plans.

Formal public scoping for the NPL project began on April 12, 2011, with the publication of the Notice of Intent in the **Federal Register** (76 FR 20370). Public scoping comments were used to identify issues that informed the formulation of alternatives and framed

the scope of analysis for the NPL Draft EIS.

All alternatives conform to the PFO Resource Management Plan Record of Decision (2008) and the RSFO Green River Resource Management Plan Record of Decision (1997) as well as the Record of Decision and Approved Resource Management Plan Amendments for the Rocky Mountain Region, Including the Greater Sage-Grouse Sub-Region of Wyoming (2015).

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 and 40 CFR 1506.10

**Mary Jo Rugwell,**

*BLM Wyoming State Director.*

[FR Doc. 2017–14130 Filed 7–6–17; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

**[Docket ID BSEE–2017–0003; OMB Control Number 1014–0018; 17XE1700DX EEEE500000 EX1SF0000.DAQ000]**

### Agency Information Collection Activities: OMB Control Number 1014–0018; Oil and Gas Drilling Operations

**ACTION:** Notice; request for comments.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in BSEE's regulations concerning *Oil and Gas Drilling Operations.*

**DATES:** You must submit comments by September 5, 2017.

**ADDRESSES:** You may submit comments by either of the following methods listed below.

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2017–0003 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014–0018 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Nicole Mason, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR part 250, subpart D, *Oil and Gas Drilling Operations.*

*Form(s):* BSEE–0125, BSEE–0133, and BSEE–0133S.

*OMB Control Number:* 1014–0018.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to the Bureau of Safety and Environmental Enforcement (BSEE), 30 U.S.C. 1751 is included as additional authority for these requirements.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (FCPIA of 2015). The OCSLA directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index (CPI) to account for inflation (43 U.S.C. 1350(b)(1)). The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment, if warranted, through rulemaking and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR part 250, subpart D, concern oil and gas drilling requirements and are the subject of this collection. This request also covers related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

BSEE uses the information collected under subpart D to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered

hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

The current subpart D regulations specify the use of forms BSEE–0125 (End of Operations Report), and BSEE–0133/0133S (Well Activity Report). The information on BSEE–0125 is used to ensure that industry has accurate and up-to-date data and information on wells and leasehold activities under their jurisdiction and to ensure compliance with approved plans and any conditions placed upon a suspension or temporary probation. It is also used to evaluate the remedial action in the event of well equipment failure or well control loss. Form BSEE–0125 is updated and resubmitted in the event the well status changes. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information submitted on BSEE–0125. The BSEE uses the information on BSEE–0133/0133S to monitor the conditions of a well and status of drilling operations. We review the information to be aware of the well conditions and current drilling activity (*i.e.,* well depth, drilling fluid weight, casing types and setting depths, completed well logs, and recent safety equipment tests and drills). The engineer uses this information to determine how accurately the lessee anticipated well conditions and if the lessee or operator is following the other approved forms that were submitted. With the information collected on BSEE–0133 available, the reviewers can analyze the proposed revisions (*e.g.,* revised grade of casing or deeper casing setting depth) and make a quick and informed decision on the request.

Some responses are mandatory and some are required to obtain or retain a benefit. No questions of a sensitive nature are asked. BSEE will protect any confidential commercial or proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2); section 26 of OCSLA (43 U.S.C. 1352); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

*Frequency:* On occasion, monthly, semi-annually, annually, and as a result of situations encountered depending upon the requirements.

*Description of Respondents:* Potential respondents comprise Federal OCS oil, gas, or sulfur lessees and/or operators and holders of pipeline rights-of-way.

*Estimated Reporting and Recordkeeping Hour Burden:* The currently approved annual reporting burden for this collection is 102,497 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

| Citation 30 CFR part 250, subpart D and NTL(s) | Reporting and recordkeeping requirement * | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
|---|---|---|---|---|
| 400–490 | Apply for use of alternative procedures and/or departures not requested in BSEE forms (including discussions with BSEE or oral approvals). | Burden covered under 1014–0022. | | 0 |
| 404 | Perform operational check of crown block safety device; record results (weekly). | 0.25 | 86 drilling rigs × 52 weeks = 4,472 records. | 1,118 |
| 408–418, 420(a)(7); 423(b)(3), (c); 449(j), (k); 456(j); plus in subparts A, B, D, E, G, H, P, Q. | Submit Application for Permit to Drill (APD Form BSEE–0123 and BSEE–0123S) that includes any/all supporting documentation and requests for various approvals required in subpart D (including §§ 250.425(a), 427, 428, 432, 447(c), 448(b),(c), 451(g), 460, 462(c), 470, 490(c)) and submitted via the form; upon request, make available to BSEE. | Burden covered under 1014–0025. | | 0 |
| 410(b) | Reference Well and site-specific information approved in your Exploration Plan, Development and Production Plan, Development Operations Coordination Document in your APD. | Burdens pertaining to EPs, DPPs, DOCDs are covered under BOEM 1010–0151 and APDs are covered under 1014–0025. | | 0 |
| 418(e) | Submit welding and burning plan according to 30 CFR 250, subpart A. | Burden covered under 1014–0022. | | 0 |
| 420(b)(3); 423(b)(7); 465(a), (b)(3); plus various ref in A, D, E, F, G, P, and Q. | Submit Form BSEE–0125, End of Operations Report (EOR), and additional supporting information as required by the cited regulations; and any additional information required by the District Manager. | 3 | BSEE–0125 279 submittals. | 837 |
| 420(b)(3) | Submit dual mechanical barrier documentation after installation on form BSEE–0125. | 0.75 | 533 submittals | 400 |
| 420(b)(3) | Request approval for alternative options to installing barriers. | 0.25 | 58 requests | 15 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR part 250, subpart D and NTL(s) | Reporting and recordkeeping requirement * | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
|---|---|---|---|---|
| 421(b) | Alaska only: Discuss the cement fill level with the District Manager. | 1 | 1 discussion | 1 |
| 421(f) | Submit and receive approval if unable to cement 500 ft above previous shoe. | Burden covered under 1014–0022. | | 0 |
| 423(a) | Request and receive approval from District Manager for repair. | 0.5 | 86 requests | 43 |
| 423(c)(2) | Document all test results pressure test and make them available to BSEE upon request. | 05 | 300 results | 150 |
| 427(a) | Record results of all pressure integrity tests and hole behavior observations re-formation integrity and pore pressure. | 2 | 4,226 record results | 8,452 |
| 428(c)(3); 428(k); ref in subparts A, D, G. | In the GOM OCS Region, submit drilling activity reports weekly (District Manager may require more frequent submittals) on Forms BSEE–0133 (Well Activity Report (WAR)) and BSEE–0133S (Bore Hole Data) with supporting documentation. | 1 | 4,160 submittals | 4,160 |
| 428(c)(3); 428(k); ref in A, D, G. | In the Pacific and Alaska Regions during drilling operations, submit daily drilling reports on Forms BSEE–0133 (Well Activity Report (WAR)) and BSEE–0133S (Bore Hole Data) with supporting documentation. | 1 | 14 wells × 365 days × 20% year = 1,022. | 1,022 |
| 428(d) | Submit all remedial actions for review and approval by District Manager (before taking action); and any other requirements of the District Manager. | 5 | 1,000 submittals | 5,000 |
| 428(d) | Submit descriptions of completed immediate actions to District Manager and any other requirements of the District Manager. | 5 | 564 submittals | 2,820 |
| 428(d) | Submit PE certification of any proposed changes to your well program; and any other requirements of the District Manager. | 4 | 450 submittals | 1,800 |
| 428(k) | Maintain daily drilling report (cementing requirements). | 0.5 | 75 reports | 38 |
| 428(k) | If cement returns are not observed, contact the District Manager to obtain approval before continuing with operations. | 1 | 10 requests | 10 |
| 434 | Record time, date & results of all diverter actuations & tests (average 2 per drilling operation); retain all charts/reports relating to diverter tests/actuations at facility for duration of drilling well. | 2 | 620 records | 1,240 |
| 452(a), (b) | Immediately transmit real-time data gathering and monitoring to record, store, and transmit data relating to the BOP control system, fluid handling, downhole conditions; prior to well operations, notify BSEE of monitoring location and make data available to BSEE upon request. | 12 | 1 transmittal | 12 |
| 452(b) | Store and monitor all information relating to § 250.452(a); make data available to BSEE upon request. | 1 | 2 wells × 138 drilling days = 276. | ..... |
| . 452(b) | Store and retain all monitoring records per requirements of §§ 250.740 and 250.741. | Burden covered under 1014–0028. | | 0 |
| 456(b), (i) | Document/record in the driller's report every time you circulate drilling fluid; results of drilling fluid tests. | 1 | 4,160 records | 4,160 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR part 250, subpart D and NTL(s) | Reporting and recordkeeping requirement * | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
|---|---|---|---|---|
| 456(c), (f) | Perform various calculations; post calculated drill pipe, collar, and drilling fluid volume; as well as maximum pressures. | 1 | 4,259 postings | 4,259 |
| 458(b) | Record daily drilling fluid and materials inventory in drilling fluid report. | 0.5 | 30,295 records | 15,148 |
| 459(a)(3) | Request exception to procedure for protecting negative pressure area. | Burden included under 1014–0022. | | 0 |
| 460 | Submit plans and obtain approval to conduct well test; notify BSEE before test (APD Form BSEE–0123). | Burden covered under 1014–0025. | | 0 |
| 460; 465; plus in A, D, E, F, G, H, P, and Q. | Provide revised plans and the additional supporting information required by the cited regulations when you submit an Application for Permit to Modify (APM) (Form BSEE–0124) to BSEE for approval; or a Revised APM. | Burden covered under 1014–0026. | | 0 |
| 461(a–b); 466(e); 468(a); NTL. | Record and submit well logs and surveys run in the wellbore and/or charts of well logging operations (including but not limited to). | 3 | 302 logs/surveys | 906 |
| | Record and submit directional and vertical-well surveys. | 1 | 302 reports | 302 |
| | Record and submit velocity profiles and surveys | 1 | 45 reports | 45 |
| | Record and submit core analyses | 1 | 130 analyses | 130 |
| 461(e) | Provide copy of well directional survey to affected leaseholder. | 0.75 | 11 occasions | 9 |
| 462(c) | NEW: Submit a description of source control and containment capabilities and all supporting information for approval. | 8 | 150 submittals | 1,200 |
| 462(d) | NEW: Request re-evaluation of your source containment capabilities from the District Manager and Regional Supervisor. | 1 | 600 requests | 600 |
| 462(e)(1) | NEW: Notify BSEE 21 days prior to pressure testing; witness by BSEE and BAVO. | 0.5 | 150 notifications | 75 |
| 463(b) | Request field drilling rules be established, amended, or canceled. | 4 | 6 requests | 24 |
| 465 | Obtain approval to revise your drilling plan or change major drilling equipment by submitting a revised BSEE–0124, Application for Permit to Modify and BSEE–0125, End of Operations Report. | Burden covered under 1014–0026 & 1014–0028. | | 0 |
| 470(a); 418 | Submit detailed descriptions of environmental, meteorologic, and oceanic conditions expected at well site(s); how drilling unit, equipment, and materials will be prepared for service; how the drilling unit will be in compliance with § 250.713. | 20 | 1 submittal | 20 |
| 470(b); 418 | Submit detailed description of transitioning rig from being underway to drilling and vice versa. | 4 | 2 each well-underway to drilling; drilling to underway = 4. | 16 |
| 470(b); 418 | Submit detailed description of any anticipated repair and maintenance plans for the drilling unit and equipment. | 2 | 2 submittals | 4 |
| 470(c); 418 | Submit well specific drilling objectives, timelines, and updated contingency plans etc., for temporary abandonment. | 4 | 2 submittals | 8 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR part 250, subpart D and NTL(s) | Reporting and recordkeeping requirement * | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
|---|---|---|---|---|
| 470(d); 418 | Submit detailed description concerning weather and ice forecasting for all phases; including how to ensure continuous awareness of weather/ice hazards at/between each well site; plans for managing ice hazards and responding to weather events; verification of capabilities. | 12 | 1 submittal | 12 |
| 470(e); 418; 472 | Submit a detailed description of compliance with relief rig plans. | 140 | 1 description | 140 |
| 470(f); 471(c); 418 | SCCE capabilities; submit equipment statement showing capable of controlling WCD; detailed description of your or your contractor's SCCE capabilities including operating assumptions and limitations; inventory of local and regional supplies and services, along with supplier relevant information; proof of contract or agreements for providing SCCE or supplies, services; detailed description of procedures for inspecting, testing, and maintaining SCCE; and detailed description of your plan ensuring all members of the team operating SCCE have received training to deploy and operate, include dates of prior and planned training. | 60 | 2 submittals | 120 |
| 470(g); 418 | Submit a detailed description of utilizing best practices of API RP 2N during operations. | 20 | 1 submittal | 20 |
| 471(c); 470(f); 465(a) | Submit with your APM, a reevaluation of your SCCE capabilities if well design changes; include any new WCD rate and demonstrate that your SCCE capabilities will comply with § 250.470(f). | 10 | 2 submittals | 20 |
| 471(e) | Maintain all SCCE testing, inspection, and maintenance records for at least 10 years; make available to BSEE upon request. | 20 | 2 records | 40 |
| 471(f) | Maintain all records pertaining to use of SCCE during testing, training, and deployment activities for at least 3 years; make available to BSEE upon request. | 20 | 2 records | 40 |
| 490(c), (d) | Submit request for reclassification of $H_2S$ zone; notify BSEE if conditions change. | Burden covered under 1014–0025. | | 0 |
| 490(f); also in 418(d) | Submit contingency plans for operations in $H_2S$ areas (16 drilling, 6 work-over, 6 production). | 30 | 28 plans | 840 |
| 490(g) | Post safety instructions; document training; retain records at facility where employee works; train on occasion and/or annual refresher (approx. 2/year). | 4 | 34 records | 136 |
| 490(h)(2) | Document and retain attendance for weekly $H_2S$ drills and monthly safety mtgs until operations completed or for 1 year for production facilities at nearest field office. | 2 | 2,514 records | 5,028 |
| 490(i) | Display warning signs—no burden as facilities would display warning signs and use other visual and audible systems. | | | 0 |
| 490(j)(7–8) | Record $H_2S$ detection and monitoring sensors during drilling testing and calibrations; make available upon request. | 4 | 4,328 records | 17,312 |
| 490(j)(12) | Propose alternatives to minimize or eliminate $SO_2$ hazards—submitted with contingency plans—burden covered under § 250.490(f). | | | 0 |
| 490(j)(13) (vi) | Label breathing air bottles—no burden as supplier normally labels bottles; facilities would routinely label if not. | | | 0 |
| 490(l) | Notify without delay of unplanned $H_2S$ releases (approx. 2/year). | Oral 0.2 | 24 notifications | 5 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR part 250, subpart D and NTL(s) | Reporting and recordkeeping requirement * | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
|---|---|---|---|---|
| | | Written 5 | 24 written reports | 120 |
| 490(o)(5) | Request approval to use drill pipe for well testing | 2 | 4 requests | 8 |
| 490(q)(1) | Seal and mark for the presence of $H_2S$ cores to be transported—no burden as facilities would routinely mark transported cores. | | | 0 |
| 490(q)(9) | Request approval to use gas containing $H_2S$ for instrument gas. | 2 | 2 requests | 4 |
| 490(q)(12) | Analyze produced water disposed of for $H_2S$ content and submit results to BSEE. | 3 | 164 submittals | 492 |
| NTL | Voluntary submit to USCG read only access to the EPIRB data for their moored drilling rig fleet before hurricane season. | .25 | 80 submittals | 20 |

* In the future, BSEE may require electronic filing of some submissions.

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* There are no non-hour cost burdens associated with this collection

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .''. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other non-hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

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

*BSEE Information Collection Clearance Officer:* Nicole Mason, (703) 787–1607.

Dated: June 6, 2017.

**Douglas Morris,**

*Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2017–14236 Filed 7–6–17; 8:45 am]

**BILLING CODE 4310–VH–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Shielded Electrical Ribbon Cables and Products Containing the Same, DN 3234;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of 3M Company and 3M Innovative Properties Company on June 30, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after

importation of certain shielded electrical ribbon cables and products containing the same. The complaint names as respondents Amphenol Corporation of Wallingford, CT; Amphenol Interconnect Products Corporation of Endicott, NY; Amphenol Cables on Demand Corporation of Endicott, NY; Amphenol Assemble Technology (Xiamen) Co., Ltd., of China; Amphenol (Xiamen) High Speed Cable Co., Ltd., of China, and Amphenol East Asia Limited (Taiwan) of China. The complainant requests that the Commission issue a general exclusion order, a cease and desist order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

i. Explain how the articles potentially subject to the requested remedial orders are used in the United States;

ii. identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

iii. identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

iv. indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

v. explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3234'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 30, 2017.

**Katherine M. Hiner,**

*Supervisory Attorney.*

[FR Doc. 2017–14249 Filed 7–6–17; 8:45 am]

**BILLING CODE 7020–02–P**

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–564 and 731–TA–1338 and 1340 (Final)]**

## Steel Concrete Reinforcing Bar From Japan and Turkey; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of steel concrete reinforcing bar (''rebar'') from Japan and Turkey, provided for in subheadings 7213.10, 7214.20, and 7228.30 of the Harmonized Tariff Schedule of the United States; subject imports from Japan and Turkey have been found by the Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and subject imports from Turkey have been found to be subsidized by that country's government.

### Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective September 20, 2016, following receipt of a petition filed with the Commission and Commerce by the Rebar Trade Action Coalition and its individual members: Bayou Steel Group, LaPlace, Louisiana; [2] Byer Steel Group, Inc., Cincinnati, Ohio; Commercial Metals Company, Irving, Texas; Gerdau Ameristeel U.S. Inc., Tampa, Florida; Nucor Corporation, Charlotte, North Carolina; and Steel Dynamics, Inc., Pittsboro, Indiana. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of rebar from Turkey were subsidized within the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Bayou Steel Group was no longer a petitioner in the final phase of these investigations.

meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and imports of rebar from Japan and Turkey were sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 15, 2017 (82 FR 13854). The hearing was held in Washington, DC, on May 18, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on June 30, 2017. The views of the Commission are contained in USITC Publication 4705 (June 2017), entitled *Steel Concrete Reinforcing Bar from Japan and Turkey: Investigation Nos. 701–TA–564 and 731–TA–1338 and 1340 (Final).*

By order of the Commission.

Issued: June 30, 2017.

**Katherine M. Hiner,**

*Supervisory Attorney.*

[FR Doc. 2017–14250 Filed 7–6–17; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Wage and Hour Division

### Agency Information Collection Activities; Comment Request; Information Collections: Davis-Bacon Certified Payroll

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in a desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Davis-Bacon Certified Payroll. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 5, 2017.

**ADDRESSES:** You may submit comments identified by Control Number 1235–0008, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

**FOR FURTHER INFORMATION CONTACT:** Melissa Smith, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:**

I. *Background:* The Davis-Bacon and related Acts (DBRA) require the application of Davis-Bacon labor standards to federal and federally assisted construction. The Copeland Act (40 U.S.C. 3145) requires the Secretary of Labor to prescribe reasonable regulations for contractors and subcontractors engaged in construction work subject to Davis-Bacon labor standards. While the Federal contracting or assistance-administering agencies have a primary responsibility for enforcement of Davis-Bacon labor standards, Reorganization Plan Number 14 of 1950 assigns to the Secretary of Labor responsibility for developing government-wide policies, interpretations and procedures to be observed by the contracting and assisting agencies, in order to assure coordination of administration and consistency of DBRA enforcement.

The Copeland Act provision cited above specifically requires the regulations to ''include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.'' This requirement is implemented by 29 CFR 3.3 and 3.4 and the standard Davis-Bacon contract clauses set forth at 29 CFR 5.5. Regulations 29 CFR 5.5 (a)(3)(ii)(A) requires contractors to submit weekly a copy of all payrolls to the federal agency contracting for or financing the construction project.

If the agency is not a party to the contract, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the contracting agency. This same section requires that the payrolls submitted shall set out accurately and completely the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals, and instead, the payrolls shall only need to include an individually identifying number for each employee (*e.g.,* the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/whd/forms/wh347.pdf.*

Regulations 29 CFR 3.3(b) requires each contractor to furnish weekly a signed ''Statement of Compliance'' accompanying the payroll indicating the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon Act prevailing wage rate for the work performed. The weekly submission of a properly executed certification, with the prescribed language set forth on page 2 of Optional Form WH–347, satisfies the requirement for submission of the required ''Statement of Compliance''. Id. at §§ 3.3(b), 3.4(b), and 5.5(a)(3)(ii)(B). Regulations 29 CFR 3.4(b) and

5.5(a)(3)(i) require contractors to maintain these records for three years after completion of the work.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

• 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;

• Enhance the quality, utility and clarity of the information to be collected;

• 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;

• 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 submissions of responses.

III. *Current Actions:* The DOL seeks an approval for the extension of this information collection requirement that contractors and subcontractors on federal and federally assisted construction subject to DBRA labor standards submit weekly certified payrolls in accordance with the statutory, regulatory, and contractual requirements discussed herein.

*Type of Review:* Extension.

*Agency:* Wage and Hour Division.

*Title:* Davis-Bacon Certified Payroll.

*OMB Number:* 1235–0008.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

*Total Respondents:* 81,404.

*Total Annual Responses:* 7,489,168.

*Estimated Total Burden Hours:* 6,989,890.

*Estimated Time per Response:* 56 minutes.

*Frequency:* Weekly.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Costs (operation/maintenance):* $988,570.

Dated: June 27, 2017.

**Mary Ziegler,**

*Assistant Administrator for Policy, Wage and Hour Division.*

[FR Doc. 2017–14301 Filed 7–6–17; 8:45 am]

**BILLING CODE 4510–27–P**

## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

### Notice of Proposed Information Collection Requests: 2017 Sustaining Indigenous Culture Survey: The Structure, Activities, and Needs of Tribal Archives, Libraries, and Museums Needs Assessment Survey

**AGENCY:** Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

**ACTION:** Notice, request for comments, collection of information.

**SUMMARY:** The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning a proposed survey to collect information to assess and report on the current activities and needs of USA-based indigenous cultural institutions of tribal archives, libraries, and museums.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before September 4, 2017.

IMLS is particularly interested in comments that help the agency to:

• 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 submissions of responses.

**ADDRESSES:** Send comments to: Dr. Sandra Webb, Senior Advisor, Office of the Director, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718, Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning and civic engagement. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying, and disseminating information on, the best practices of such programs; and developing plans to improve museum, library and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

#### II. Current Actions

The purpose of this survey is to gather information related to current activities, challenges, and unmet needs of tribal archives, libraries, and museums. The project is managed by the Association of Tribal Archives, Libraries, and Museums (ATALM), a tribally-led non-profit organization which provides professional development activities, tools, and training.

Data will be collected through an online survey.

Information gathered will provide insight for tribal governments, cultural institutions, and the public. A full

report of the findings, as well as recommended actions, will be published by ATALM.

*Agency:* Institute of Museum and Library Services.

*Title:* 2017 Sustaining Indigenous Culture Survey: The Structure, Activities, and Needs of Tribal Archives, Libraries, and Museums.

*OMB Number:* To be determined.

*Frequency:* One-time collection anticipated.

*Affected Public:* The target population is tribal archive, library, and museum centers, as well as leaders of tribal communities without cultural programs.

*Number of Respondents:* To be determined.

*Estimated Average Burden per Response:* To be determined.

*Estimated Total Annual Burden:* To be determined.

*Total Annualized Capital/Startup Costs:* n/a.

*Total Annual Costs:* To be determined.

*Public Comments Invited:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sandra Toro, Senior Program Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza SW., Suite 4000, Washington, DC 20024. Dr. Toro can be reached by Telephone: 202–653–4662, Fax: 202–653–4608, or by email at *storo@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202/653–4614. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

Dated: July 3, 2017.

**Kim Miller,**

*Grants Management Specialist, Office of Chief Information Officer.*

[FR Doc. 2017–14302 Filed 7–6–17; 8:45 am]

**BILLING CODE 7036–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81069; File No. SR–Phlx–2017–49]**

## Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Delivery of Options Disclosure Documents and Special Statement for Uncovered Options Writers

June 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2017 NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1029, Delivery of Options Disclosure Documents.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchanges proposes to amend Rule 1029 in two respects, first in connection with the required delivery to customers of any amended Options Disclosure Document (''ODD''), and second to set forth for the use of members and member organizations a Special Statement for Uncovered Options Writers for delivery to customers.

Delivery of Amended Options Disclosure Documents

Rule 1029 currently requires every member and member organization to deliver a current ODD to each customer at or prior to the time such customer's account is approved for options trading. The rule also contains a requirement that each amended ODD shall be distributed to every customer having an account approved for trading the options class(es) to which such ODD relates, or, the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into an option transaction pertaining to such an options class. The language concerning amended Options Disclosure Documents is somewhat awkward and cumbersome, with the required *timing* of the provision of the amended ODD presented as ''an alternative'' to a requirement that the amended ODD be distributed in the first place to every customer having an account approved for trading the options classes(es) to which such ODD relates. The Exchange proposes to delete this language, and to replace it with more straightforward language requiring a copy of each amendment to an ODD to be furnished to each customer who was previously furnished the ODD to which the amendment pertains, not later than the time a confirmation of a transaction in the category of options to which the amendment pertains is delivered to such customer. This language is based upon comparable language in Chapter 11, Section 15(a)(ii), of the Nasdaq Options Market rules, Nasdaq ISE Rule 616(a)(2), and Chicago Board Options Exchange (''CBOE'') Rule 9.15(a). The Exchange is also making a minor edit to the introductory sentence, substituting the word ''transactions'' for the word ''trading'' in order to conform to the terminology used by the foregoing exchanges.

Special Statement for Uncovered Options Writers

Rule 1024(c)(v) requires every member organization transacting business with the public in uncovered option contracts develop, implement and maintain specific written procedures governing the conduct of such business, including requirements that customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short option transactions, at or prior to the initial uncovered short option transaction. This written disclosure document must be furnished to customers in addition to the ODD required to be provided to customers trading in options pursuant to Rule 1029(a). Current Rule 1029(b) states that the written description of risks required by Rule 1024(c)(v) shall be in a format prescribed by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange or in a format developed by the member organization, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

The Exchange now proposes to add Rule 1029(c), which will set forth a sample risk description captioned ''Special Statement for Uncovered Options Writers'' (the ''Special Statement'') for use by member organizations to satisfy the requirements of Rule 1029(b). The Special Statement alerts customers to the special risks associated with uncovered options writing which may expose investors to potentially significant loss, and states that this type of strategy may therefore not be suitable for all customers approved for options transactions. The Special Statement describes potential losses of uncovered call and put option writing, the possibility of significant margin calls, strategies where the potential risk is unlimited, consequences of unavailability of a secondary market in options, and the risk born by the writer of an American-style option subject to assignment of an exercise at any time after he has written the option until the option expires. The proposed rules are intended to increase customer awareness of the risks entailed in selling uncovered short option contracts.[3] This language is almost identical to language contained in Chapter 11, Section 15 (c) of the NOM rules, CBOE Rule 9.15(b), and ISE Rule 616(d).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The amendment of the portion of the rule requiring the delivery to customers of any amended ODD should protect investors by making this regulatory obligation more clear to members and member organizations, thus ensuring that amendments will be delivered to each customer who was previously furnished the ODD to which the amendment pertains. The proposed rule setting forth the Special Statement is intended to protect investors by facilitating increased customer awareness of the particular risks associated with selling uncovered short option contracts. The distribution to customers of this short succinct written statement that describes the risks associated with uncovered options writing will help ensure investor protection because it will increase customer awareness of the potential for significant losses in writing uncovered short options contracts. Since disclosure is an important component of investor protection under the federal securities laws, providing investors with this special uncovered short options risk statement may help ameliorate problems associated with uncovered short options transactions (*e.g.,* significant margin calls), especially during volatile markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The language which is proposed to be added to Rule 1029 has previously been considered and approved by the Commission for use in other exchanges' rulebooks as discussed above.[6]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2017–49 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2017–49. 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

[3] The Special Statement was originally based upon a prototype developed by the Options Self-Regulatory Council consisting of representatives of the American Stock Exchange, Chicago Board Options Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Exchange, Philadelphia Stock Exchange and Pacific Stock Exchange. *See* Securities Exchange Act Release No. 26952 (June 21, 1989), 54 FR 27256 (June 28, 1989). The language of the Special Statement was included as an exhibit to SR–Phlx–89–24 which was approved in the foregoing approval order, but was not submitted as part of the rule text in that filing. The Exchange is now adding the Special Statement language into the actual rule text.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* footnote 3 above.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2017–49 and should be submitted on or before July 28, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14247 Filed 7–6–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 32723; 812–14716]**

## Vertical Capital Income Fund and Oakline Advisors, LLC

July 3, 2017.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and shareholder service fees and early withdrawal charges.

**APPLICANTS:** Vertical Capital Income Fund (the ''Initial Fund''), and Oakline Advisors, LLC (the ''Adviser'').

**FILING DATES:** The application was filed on November 21, 2016, and amended on April 20, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 28, 2017, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: c/o JoAnn Strasser, Esq., Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus, OH 43215–6101.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Solomon, Senior Counsel, at (202) 551–6915, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Applicants' Representations

1. The Initial Fund is a Delaware statutory trust that is registered under the Act as a diversified, closed-end management investment company. The Initial Fund's primary investment objective is to seek income.

2. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser serves as investment adviser to the Initial Fund.

3. The applicants seek an order to permit the Funds (as defined below) to issue multiple classes of shares, each having its own fee and expense structure and to impose early withdrawal charges and asset-based distribution and shareholder service fees with respect to certain classes.

4. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser and which operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Future Fund'' and together with the Initial Fund, the ''Funds'').[2]

5. Each Fund intends to engage in a continuous offering of its shares of beneficial interest. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange nor publicly traded. There is currently no secondary market for the Funds' shares and the Funds expect that no secondary market will develop.

6. If the requested relief is granted, the Initial Fund intends to redesignate its common shares as Class A shares and to commence a continuous offering of Class I and Class C shares, with each class having its own fee and expense structure, and may also offer additional classes of shares in the future. Because of the different distribution fees, services and any other class expenses that may be attributable to the Class A, Class I, and Class C shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Initial Fund may create additional classes of shares, the terms of which may differ from Class A, Class I and Class C shares in the following respects: (i) The amount of fees permitted by different distribution plans or different shareholder services fee arrangements; (ii) voting rights with respect to a distribution plan of a class; (iii) different class designations; (iv) the impact of any class expenses directly attributable to a particular class of shares allocated on a class basis as described in the application; (v) any differences in dividends and net asset value resulting from differences in fees under a distribution plan or in class expenses; (vi) any early withdrawal

[9] 17 CFR 200.30–3(a)(12).

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

charge or other sales load structure; and (vii) exchange or conversion privileges of the classes as permitted under the Act.

8. Applicants state that the Initial Fund has adopted a fundamental policy to repurchase a specified percentage of its shares (no less than 5%) at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act. Each of the other Funds will likewise adopt fundamental investment policies in compliance with rule 23c–3 and make quarterly repurchase offers to its shareholders, or provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[3] Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

9. Applicants represent that any asset-based service and distribution fees for each class of shares of the Funds will comply with the provisions of FINRA Rule 2341 (''FINRA Sales Charge Rule'').[4] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A.[5] As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[6] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[7]

10. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, shareholder service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

12. Applicants state that each Fund may impose an early withdrawal charge on shares submitted for repurchase that have been held less than a specified period and may waive the early withdrawal charge for certain categories of shareholders or transactions to be established from time to time. Applicants state that each of the Funds will apply the early withdrawal charge (and any waivers or scheduled variations of the early withdrawal charge) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

13. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an early withdrawal charge as if it were a contingent deferred sales load.

**Applicants' Legal Analysis**

*Multiple Classes of Shares*

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or

[3] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933, as amended.

[4] Any reference in the application to the FINRA Sales Charge Rule includes any successor or replacement rule to the FINRA Sales Charge Rule.

[5] In all respects other than class-by-class disclosure, each Fund will comply with the requirements of Form N–2.

[6] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[7] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1–1, *et seq.* of the Act.

class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

*Early Withdrawal Charges*

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose early withdrawal charges on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the early withdrawal charges they intend to impose are functionally similar to contingent deferred sales loads imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose contingent deferred sales loads, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of contingent deferred sales loads where there are adequate safeguards for the investor and state that the same policy considerations support imposition of early withdrawal charges in the interval fund context. In addition, applicants state that early withdrawal charges may be necessary for the distributor to recover distribution costs. Applicants represent that any early withdrawal charge imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose early withdrawal charges in accordance with the requirements of Form N–1A concerning contingent deferred sales loads.

*Asset-Based Distribution and Shareholder Service Fees*

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and shareholder service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and shareholder service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

**Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–14314 Filed 7–6–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81061; File No. SR–NYSEArca-2017–70]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Specify in Exchange Rules the Exchange's Primary and Secondary Sources of Data Feeds From NYSE MKT LLC

June 30, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the

[1] 15 U.S.C. 78s(b)(1).

''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 21, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to specify in Exchange rules the Exchange's primary and secondary sources of data feeds from NYSE MKT LLC for order handling and execution, order routing, and regulatory compliance. 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 NYSE Arca Equities Rule 7.37 (''Rule 7.37'') to specify in Exchange rules the primary and secondary sources of data feeds from NYSE MKT LLC (''NYSE MKT'') that the Exchange would use for order handling and execution, order routing, and regulatory compliance.

On July 18, 2014, the Exchange filed a proposed rule change that clarified the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance.[4] As noted in that filing, the data feeds available for the purposes of order handling and execution, order routing, and regulatory compliance at the Exchange include the exclusive securities information processor (''SIP'') data feeds [5] or proprietary data feeds from individual market centers (''Direct Feed''). On February 24, 2015, the Exchange adopted Commentary .01 to Rule 7.37 to specify which data feeds that the Exchange uses for the handling, execution, and routing of orders, as well as for regulatory compliance.[6] After implementation of Pillar, the Exchange's new trading technology system, Commentary .01 was replaced by Rule 7.37(d).[7]

NYSE MKT has amended its rules to provide for an intentional access delay to certain inbound and outbound order messages on that exchange (the ''Delay Mechanism'').[8] NYSE MKT will be implementing the Delay Mechanism when it transitions to the Pillar trading platform.[9] The Delay Mechanism adds 350 microseconds of one-way latency to inbound and outbound communications, including all outbound communications to NYSE MKT's Direct Feeds.[10] NYSE MKT will not apply the Delay Mechanism to outbound communications to the SIP.[11] To use the lowest-latency source of information regarding NYSE MKT quotes and trades in Tape A and B securities, the Exchange proposes to amend Rule 7.37(d) to specify that the Exchange would use the SIP Data Feed as the primary source of data for all securities, including Tape C, from that market center, and would use the Direct Feed from NYSE MKT as the secondary source.

The Exchange proposes to implement these changes coincident with the transition of NYSE MKT to the Pillar technology and with the implementation of the Delay Mechanism, which are expected to be on July 24, 2017.[12]

The Exchange also proposes non-substantive amendments to Rule 7.37(d) to update the names of the market centers and to eliminate an inoperative market center.[13]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 removes impediments to and perfects the mechanism of a free and open market because it would provide notice of which data feeds the Exchange uses for execution and routing decisions and for order handling and regulatory compliance, thus enhancing transparency.

*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. The proposed change is not designed to address any competitive issue but rather would provide the public and investors with information about which data feeds the Exchange uses for execution

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 72708 (July 29, 2014), 79 FR 45572 (Aug. 5, 2014) (SR–NYSEArca-2014–82).

[5] The SIP feeds are disseminated pursuant to effective joint-industry plans as required by Rule 603(b) of Regulation NMS. 17 CFR 242.603(b). The three joint-industry plans are: (1) The CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for securities with the primary listing market on exchanges other than NASDAQ Stock Market LLC (''Nasdaq''); (2) the CQ Plan, which disseminates consolidated quotation information for securities with their primary listing on exchanges other than Nasdaq; and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for securities with their primary listing on Nasdaq.

[6] *See* Securities Exchange Act Release No. 74409 (March 2, 2015), 80 FR 12221 (March 6, 2015) (SR–NYSEArca–2015–11).

[7] *See* Securities Exchange Act Release No. 79078 (October 11, 2016), 81 FR 71559 (October 17, 2016) (SR–NYSEArca–2016–135).

[8] *See* NYSE MKT Rule 7.29E(b).

[9] Securities Exchange Act Release No. 80700 (May 16, 2017), 82 FR 23381 (May 22, 2017) (SR–NYSEMKT–2017–05) (Approval Order).

[10] *See* NYSE MKT Rule 7.29E(b)(1)(E).

[11] *See* NYSE MKT Rule 7.29E(b)(2)(C).

[12] *See* NYSE Group Pillar Migration Trader Update available at *https://www.nyse.com/publicdocs/nyse/notifications/trader-update/Pillar%20Migration%20Update.pdf.*

[13] Specifically the Exchange proposes to update the names of Bats BYX Exchange, Inc. (formerly BATS Y-Exchange, Inc.), Bats BZX Exchange, Inc. (formerly BATS Exchange, Inc.), Bats EDGA Exchange, Inc. (formerly EDGA Exchange, Inc.), Bats EDGX Exchange, Inc. (formerly EDGX Exchange, Inc.), NASDAQ BX, Inc. (formerly NASDAQ OMX BX, Inc.) and NASDAQ PHLX LLC (formerly NASDAQ OMX PHLX, LLC). The Exchange also proposes to remove National Stock Exchange LLC, which is currently not operating and therefore the Exchange is not receiving any data feeds from that market center. *See* Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR–NSX–2017–04).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

and routing decisions and for order handling and regulatory compliance.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [16] of the Act and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–70 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–2017–70. 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–2017–70, and should be submitted on or before July 28, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14241 Filed 7–6–17; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81065; File No. SR–CBOE–2017–010]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Withdrawal of a Proposed Rule Change Related to Unusual Market Conditions and the Duty To Systemize Non-Electronic Orders Prior to Representation

June 30, 2017.

On February 15, 2017, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 amend its rules regarding the circumstances in which CBOE Floor Officials may declare a ''fast'' market and the actions those Floor Officials may take when a fast market is declared, including the ability to suspend the duty to systemize a non-electronic order prior to representing it in open outcry trading. The proposed rule change was published for comment in the **Federal Register** on March 6, 2017.[3] On April 18, 2017, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 2, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comments on the proposed rule change. On June 26, 2017, CBOE withdrew the proposed rule change (SR–CBOE–2017–010).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14244 Filed 7–6–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81060; File No. SR–MSRB–2017–04]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G–21(e), on Municipal Fund Security Product Advertisements

June 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80123 (February 28, 2017), 82 FR 12667 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 80481, 82 FR 18941 (April 24, 2017). The Commission designated June 4, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] *See* Securities Exchange Act Release No. 80854, 82 FR 26724 (June 8, 2017).

[7] 17 CFR 200.30–3(a)(12).

''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2017 the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to amend MSRB Rule G–21(e), on municipal fund security product advertisements, to address important regulatory developments and to enhance investor protection in connection with municipal fund securities (''proposed rule change''). The MSRB requests that the proposed rule change be approved with an implementation date three months after the Commission approval date for all changes.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2017-Filings.aspx,* at the MSRB's principal office, 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 MSRB 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 MSRB 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

**Background**

For over 40 years, Section 15B of the Exchange Act has granted the Board with rulemaking authority over the municipal securities transactions effected by brokers, dealers, and municipal securities dealers (collectively, ''dealers''). However, following the financial crisis of 2008, Congress expanded that authority with its enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[3] The Dodd-Frank Act amended Section 15B of the Exchange Act to establish a new federal regulatory regime requiring municipal advisors to register with the Commission, deeming them to owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them.[4] The MSRB, in the exercise of that rulemaking authority, has been developing a comprehensive regulatory framework for municipal advisors and their associated persons.

In the context of developing a rule to address advertising by municipal advisors, the Board undertook a holistic review of its advertising rules, and determined to draft amendments to Rule G–21 as well as to develop new draft Rule G–40, on advertising by municipal advisors. The Board sought public comment on the draft amendments to Rule G–21 and new draft Rule G–40,[5] and, in response, received 11 comment letters.[6]

While the Board is considering the comments it received in response to that Request for Comment on various other potential changes to advertising regulations, the Board has concluded to separately propose rule changes to Rule G–21(e) alone to address important regulatory developments and to enhance investor protection in connection with municipal fund securities.[7]

**Proposed Rule Change**

In summary, the proposed rule change would amend Rule G–21(e) to:

- Reflect relevant regulatory developments;
- enhance the ''out-of-state disclosure obligation'' [8] about the potential other benefits an investor may be provided by investing in a 529 college savings plan offered by the home state of the investor or of the designated beneficiary;
- clarify that certain advertisements that contain performance data may include a hyperlink to a Web site that contains more recent performance data; and
- include several revisions that are designed to promote understanding of and compliance with the rule.

A detailed discussion about the proposed rule change's enhancements to Rule G–21(e) follows.

*A. Regulatory Developments*

The proposed rule change would amend Rule G–21(e) to reflect two regulatory developments—the SEC's money market reforms and the formation of the Financial Industry Regulatory Authority, Inc. (''FINRA'').

Rule G–21(e)(i)(A)(2)(c) requires that a municipal fund security advertisement of an investment option that the issuer holds out as having the characteristics of a money market fund include certain disclosures. The Board designed those disclosures to protect investors by alerting them to the potential risks of investing in that investment option, and modeled the disclosures on the disclosures required for money market fund advertisements by Rule 482(b)(4) [9] under the Securities Act of 1933, as amended (the ''1933 Act'').[10]

The proposed rule change would require that a municipal fund security advertisement of an investment option that has the characteristics of a money market fund include enhanced

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pub. Law No. 111–203, 124 Stat. 1376 (2010).

[4] *See* 15 U.S.C. 78*o*–4.

[5] MSRB Notice 2017–04 (Feb. 16, 2017) (the ''Request for Comment'').

[6] Letter from Noreen P. White, Co-President and Kim M. Whelan, Co-President, Acacia Financial Group, Inc., dated April 7, 2017; Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated March 24, 2017; Letter from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services, LLC, Richard J. O'Brien, Chief Compliance Officer, National Financial Services, LLC, and Jason Linde, Chief Compliance Officer, Fidelity Investments Institutional Services Company, LLC, dated March 24, 2017 (''Fidelity''); Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated March 24, 2017 (''FSI''); Letter from Laura D. Lewis, Principal, Lewis Young Robertson & Burningham, Inc., dated March 24, 2017; Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated March 24, 2017; Letter from Leo Karwejna, Chief Compliance Officer, Cheryl Maddox, General Counsel, and Catherine Humphrey-Bennett, Municipal Advisory Compliance Officer, Public Financial Management, Inc. and PFM Financial Advisors LLC, dated March 23, 2017; Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 24, 2017 (''SIFMA''); Letter from Paul Curley, Director of College Savings Research, Strategic Insight, dated May 16, 2017 (''SI''); Letter from Donna DiMaria, Chairman of the Board of Directors and Chair of the 3PM Regulatory Committee, Third Party Marketers Association, dated March 23, 2017; and Letter from Robert J. McCarthy, Director, Regulatory Policy, Wells Fargo Advisors, dated March 24, 2017.

[7] The proposed amendments to Rule G–21(e) have no substantive connection with the draft amendments to the other provisions of Rule G–21 or with draft Rule G–40.

[8] *See* Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans (Aug. 7, 2006) (discussing point-of-sale disclosure obligations under Rule G–17 and defining ''out-of-state disclosure obligation'').

[9] 17 CFR 230.482(b)(4).

[10] 15 U.S.C. 77a; *see* File No. SR–MSRB–2004–09 (Dec. 16, 2004); Exchange Act Release No. 50919 (Dec. 22, 2004).

disclosure about the risks associated with investing in that investment option. Money market funds generally invest in short-term obligations and have a principal investment objective of maintaining a net asset value of $1.00 per share.[11] However, during the financial crisis of 2008, money market funds experienced high redemption rates that caused a money market fund to ''break the buck'' (*i.e.,* maintain a net asset value of less than $1.00 per share).[12] Following the financial crisis, the SEC adopted amendments that were designed, among other things, to make money market funds more resilient to certain short-term market risks and to provide greater protections for investors.[13]

The disclosure that would be required by the proposed rule change reflects the SEC's money market reforms. The Board tailored the proposed disclosure for each of the three categories of money market funds in which a municipal fund security investment option could invest. Those categories are: (i) Money market funds that are not government money market funds or retail money market funds with floating net asset values that may impose liquidity fees and that may temporarily suspend redemptions; (ii) money market funds that are government money market funds or retail money market funds that maintain stable net asset values that may impose liquidity fees or that may temporarily suspend redemptions; and (iii) money market funds that are government money market funds that maintain stable net asset values and that have elected not to impose liquidity fees or to temporarily suspend redemptions. The proposed rule change to Rule G–21(e)(i)(A)(2)(c) is substantially similar to the SEC's amendments to Rule 482(b)(4) under the 1933 Act,[14] as modified to reflect the differences in the characteristics between municipal fund securities and money market funds.[15]

Specifically, the current disclosure required by Rule G–21(e)(i)(A)(2)(c) alerts a 529 college savings plan investor that an investment option that the issuer holds out as having the characteristics of a money market fund (i) is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency (unless such guarantee is provided by or on behalf of such issuer) and (ii) if the money market fund is held out as maintaining a stable net asset value, that although the issuer seeks to preserve the value of the investment at $1.00 per share or such other applicable fixed share price, it is possible to lose money by investing in the investment option. In addition to the current disclosure, the proposed rule change would require enhanced disclosure to alert the investor that, as applicable, the underlying mutual fund may impose a liquidity fee or suspend redemptions and that the investor should not expect the underlying fund sponsor to provide financial support to the underlying mutual fund.

The proposed rule change also would update Rule G–21(e)(ii)(F) and Rule G–21(e)(vi) to substitute FINRA for references to the National Association of Securities Dealers, Inc. (''NASD'').

*B. Out-of-State Disclosure Obligation*

The proposed rule change would enhance the out-of-state disclosure required by Rule G–21(e)(i)(A)(2)(b). Under Rule G–21(e)(i)(A)(2)(b), certain advertisements for a 529 college savings plan must provide disclosure that an investor should consider, before investing, whether the investor's or the designated beneficiary's home state offers any state tax or other benefits that are only available for investment in such state's 529 college savings plan. To assist an investor's understanding of what those other state benefits may include, the proposed rule change would require disclosure that those other state benefits may include financial aid, scholarship funds, and protection from creditors.

*C. Performance Data*

The proposed rule change would provide two clarifications to the legend that must be provided in an advertisement of performance data by a municipal fund security. Rule G–21(e)(i)(A)(3)(a) requires that a municipal fund security's advertisement of performance data include a legend that discloses that the performance data set forth in the advertisement represents past performance; that past performance does not guarantee future results; that the investment return and the value of the investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data included in the advertisement. The proposed rule change would clarify that an investment option that invests in a government money market fund or a retail money market fund may omit the disclosure required by the legend about principal value fluctuation. That clarification is consistent with Rule 482(b)(3) under the 1933 Act that permits government money market funds and retail money market funds to omit that disclosure.[16]

Further, Rule G–21(e)(i)(A)(3)(a) requires that the legend in a municipal fund security's advertisement of performance data that is not current to the most recent month ended seven business days before the date of any use of the advertisement, also must disclose where the investor may obtain more current performance data. The legend must include a toll-free number or a Web site where the investor may obtain that information. The proposed rule change would clarify that the advertisement may provide a hyperlink to the Web site where the investor may obtain total return quotations current to most recent month end for which such total return information is available. The Board believes that the use of the hyperlink to a Web site will assist investors in obtaining more current performance data. Further, the use of a hyperlink to provide certain data is consistent with the rules of other financial regulators.[17]

*D. Enhancements to Terms Used in Rule G–21(e)*

To assist the reader's understanding of the disclosure and to assist with a dealer's compliance with the rule, the proposed rule change would make

[11] Net asset value is the mutual fund's total assets minus its total liabilities. *See* Fast answers available at *https://www.sec.gov/fast-answers/answersnavhtm.html*.

[12] On September 16, 2008, the Reserve Fund announced that its Primary Fund would ''break the buck.'' *See* Investment Company Act Rel. No. 28807 (June 30, 2009), 74 FR 32688 (July 8, 2009), note 44.

[13] *See* Securities Act Release No. 9616 (July 23, 2014), 79 FR 47736 (Aug. 14, 2014) (adopting money market reforms); Investment Company Act Rel. No. 28807 (June 30, 2009), 74 FR 32688 (July 8, 2009) (proposing money market reforms).

[14] 17 CFR 230.482(b)(4).

[15] Specifically, an interest in a 529 college savings plan is an interest in an account (a ''unit''). The account, in turn, may invest in mutual funds such as a money market fund. An investor does not receive shares of the mutual fund; the investor receives units and only indirectly invests in the mutual fund through the units of the account. However, this is not the case with a mutual fund investment. A mutual fund investor directly receives shares in a mutual fund. Therefore, the proposed rule change, unlike Rule 482(b)(4)'s disclosure for mutual funds, refers to an investment in an investment option and an investor only indirectly investing in a money market fund through an underlying mutual fund offered by an investment option. The proposed rule change does not refer to direct investments in a mutual fund.

[16] 17 CFR 230.482(b)(3) (''[a]n advertisement for a money market fund that is a government money market fund, as defined in § 270.2a–7(a)(16) of this chapter, or a retail money market fund, as defined in § 270.2a–7(a)(25) of this chapter may omit the disclosure about principal value fluctuation'').

[17] *See, e.g.,* FINRA Rule 2213(c)(1)(C) on requirements for the use of bond mutual fund volatility ratings requiring a ''link to, or Web site address for, a Web site that includes the criteria and methodologies used to determine the rating.''

certain revisions to the provisions of Rule G–21(e). The proposed rule change would amend Rule G–21(e) to use terms more commonly used with municipal fund securities and that are used with the MSRB's other rules applicable to municipal fund securities (*e.g.,* the term ''investment option''), such as Rule G–45, on reporting of information on municipal fund securities. The proposed rule change also would amend Rule G–21(e)(i)(A)(2)(c) and Rule G–21(e)(i)(A)(3)(c) to clarify that a municipal fund security offers investment options and that those investment options, in turn, may invest in mutual funds. Proposed paragraph .01 of the Supplementary Material would clarify that the term ''investment option'' shall have the same meaning as defined in Rule G–45(d)(vi). Proposed paragraph .02 of the Supplementary Material would clarify that under Rule G–21(e)(i)(A)(2)(c), a dealer may omit the last sentence of the required disclosure if that disclosure is not applicable to the underlying fund according to Rule 482(b)(4) under the 1933 Act.[18] The proposed rule change also would amend Rule G–21(e)(i)(A)(3)(a) to clarify that an investor receives units in the municipal fund security.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act[19] provides that

> [t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act[20] provides that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the provisions of Sections 15B(b)(2)[21] and 15B(b)(2)(C) of the Exchange Act[22] because it would update and modernize the MSRB's municipal fund security product advertising rule applicable to dealers. The proposed rule change would enhance certain disclosures required by the rule to reflect relevant regulatory developments. Those enhanced disclosures would protect investors by alerting investors about certain risks of investing in investment options that in turn invest in money market funds. Further, the proposed rule change would protect investors by providing the investor with (i) enhanced out-of-state disclosure concerning the potential other benefits that may be offered by investing in the 529 college saving plan offered by the investor's or the designated beneficiary's home state and (ii) the ability to obtain more current performance information through the use of a hyperlink to a Web site. By providing investors with enhanced disclosure, an investor has more information to evaluate the municipal fund security advertisement, which in turn, would help prevent fraudulent acts and practices as well as promote just and equitable principles of trade. In addition, the enhanced disclosures would facilitate transactions in municipal fund securities by eliminating certain discordance between the disclosure required by Rule G–21(e) relating to investment options that invest in money market funds and the disclosure required by the advertising rules applicable to money market funds registered with the Commission. By so doing, the Board believes that it would facilitate efficient and uniform examination and enforcement by the regulators that enforce the Board's rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 15B(b)(2)(C) of the Exchange Act[23] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In accordance with the Board's policy on the use of economic analysis,[24] the MSRB has considered the economic impact of the proposed rule change—with regard to certain advertisements of municipal fund securities that require additional disclosures as related to 529 college savings plans— including a comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed rule change would enhance those additional disclosures as they relate to 529 college savings plans by expanding the disclosure about the other state benefits that are available only for investments in such state's qualified tuition program. Those other state benefits include financial aid, scholarship funds, and protection from creditors. The proposed rule change would also harmonize that disclosure with disclosure required by the recent amendments made by the SEC to Rule 482 under the 1933 Act applicable to certain mutual fund advertisements. That disclosure includes disclosure about a money market fund's ability to impose a liquidity fee and to temporarily suspend redemptions.

The MSRB does not believe the proposed rule change would create a burden on competition, as all municipal fund securities dealers would be subject to the additional requirements for disclosures.

The MSRB believes that the proposed rule change may reduce inefficiencies and confusion for dealers via harmonization of MSRB rule requirements with comparable SEC requirements on advertising. The MSRB believes investors should benefit from better information in the form of more consistent and accurate advertising through updated requirements for certain municipal fund security advertisements, as investors generally value ease of comparison of different financial products.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The MSRB received 11 comment letters in response to the Request for Comment on the draft amendments to Rule G–21 and new draft Rule G–40.[25] Of those comment letters, four comment letters addressed the draft amendments to Rule G–21(e).[26] All four commenters

[18] 17 CFR 230.482(b)(4).

[19] 15 U.S.C. 78*o*–4(b)(2).

[20] 15 U.S.C. 78*o*–4(b)(2)(C).

[21] 15 U.S.C. 78*o*–4(b)(2).

[22] 15 U.S.C. 78*o*–4(b)(2)(C).

[23] *Id.*

[24] Policy on the Use of Economic Analysis in MSRB Rulemaking, available at, *http://www.msrb.org/About-MSRB/Financial-and-Other-Information/FinancialPolicies/Economic-Analysis-Policy.aspx.*

[25] *See supra* note 5.

[26] Fidelity, FSI, SIFMA and SI.

supported the draft amendments,[27] and one commenter suggested that the MSRB could easily separate Rule G–21(e) from the rest of Rule G–21, if necessary.[28] Specifically, commenters expressed support for the proposed rule change's use of hyperlinks, harmonization of Rule G–21(e) with the advertising rules of other financial regulators, and enhanced out-of-state disclosure. The MSRB summarizes the comments received relating to the proposed rule change in the four comment letters by topic below.

*A. Hyperlinks*

Fidelity and SIFMA expressed support for the use of hyperlinks to provide more current performance information.[29] The MSRB appreciates Fidelity's and SIFMA's support for the proposed rule change and their suggestion concerning the expanded use of hyperlinks. The Board anticipates that it will continue to explore the use of hyperlinks in other areas of its rule book.

*B. Harmonization With Other Financial Regulations*

FSI supported the proposed rule change's harmonization with the SEC's advertising rules applicable to mutual funds.[30]

*C. Out-of-State Disclosure*

SI supported the enhanced out-of-state disclosure. SI commented that the ''added detail and clarity'' will enhance the value of 529 college savings plans for investors and advisors, because the disclosure will assist the reader in more fully understanding what the other benefits may be of investing in a 529 college savings plan offered by the investor's or the designated beneficiary's home state.[31]

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2017–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2017–04. 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 MSRB. 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–MSRB–2017–04 and should be submitted on or before July 28, 2017.

For the Commission, pursuant to delegated authority.[32]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14240 Filed 7–6–17; 8:45 am]

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[27] *See, e.g.,* FSI letter at 2.

[28] *See* SIFMA letter at 8 (''[t]his section can be easily separated from the rest of the rule, if necessary'').

[29] Specifically, Fidelity stated:

We fully support these draft amendments and believe that hyperlinks are a commonly used method of communication, well understood by investors, through which investors can obtain additional details on facts that matter to them.

*See* Fidelity letter at 3.

Similarly, SIFMA stated that, ''SIFMA and its members support the ability to use hyperlinks in this rule . . . .'' *See* SIFMA letter at 8.

[30] Specifically, FSI stated:

I. *FSI strongly supports efforts to harmonize Rule G–21 with other financial regulations*

. . . The Proposed Rule also amends Rule G–21(e) to incorporate the provisions included in the SEC's amendments to its registered investment company advertising rules. The draft amendments to Rule G–21(e) replace the money market mutual fund disclosure required by current Rule G–21 with a modified version of the money market mutual fund disclosure currently required by SEC rules.

*See* FSI letter at 2.

[31] SI stated, in part, that:

Strategic Insight appreciates the higher level of detail and clarity by expanding the description of ''other benefits'' to include reference to ''such as financial aid, scholarship funds, and protection from creditors'' as these are important factors that investors often overlook. By expanding the description, 529s will also be easier to understand which encourages use of the product. Ultimately, the added detail and clarity will enhance the value of 529s for investors and advisors, as they may not have been able to identify what the ''other benefits'' were referencing previously.

*See* SI letter.

[32] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81068; File No. SR–ICEEU–2017–007]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Limited Articles of Association

June 30, 2017.

**I. Introduction**

On May 2, 2017, ICE Clear Europe Limited (''ICE Clear Europe''), 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 (SR–ICEEU–2017–007) to amend its Articles of Association. The proposed rule change was published for comment in the **Federal Register** on May 19, 2017.[3] The Commission received no comment letters regarding

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–80674 (May 19, 2017), 82 FR 23080 (May 19, 2017) (SR–ICEEU–2017–007) (the ''Notice'').

the proposed change. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description of the Proposed Rule Change

As more fully described in the Notice, the proposed rule change seeks to amend the Articles of Association, among other things, to update the Articles to add definitions that reflect ICE Clear Europe's existing committees, change the minimum number of directors from two to six, provide for selection of replacement or additional directors by the Nominations Committee, make use of a Senior Independent Director appointed in accordance with the UK Corporate Governance Code, stagger the retirement or rotation of independent directors (the provisions for the retirement or rotation of CDS directors will not change), explicitly provide that directors appoint members of relevant committees, which operate under their own terms of reference, require independent directors to disclose to the Board of Directors all other directorships that they hold both prior to appointment and on an ongoing basis, adopt new procedures identifying and addressing conflicts of interest of directors with respect to both transactions with ICE Clear Europe where a director has an interest and matters in the ordinary course in which directors' interests are affected (*i.e.,* directors affiliated with clearing members), make clarifications to notice waiver requirements, and require a written record of all unanimous or majority decisions of the directors for at least ten years. Additionally, ICE Clear Europe proposed other non-substantive corrections and clarifications to the Articles of Association. For example, various references to persons have been revised to be gender-neutral, and various articles have been renumbered in light of the changes discussed above.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[4] Section 17A(b)(3)(C) of the Act requires,[5] among other things, that the rules of a clearing agency [6] assure a fair representation of its participants in the selection of its directors and administration of its affairs. Section 17A(b)(3)(F) of the Act requires,[7] among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest. Rule 17Ad–22(e)(2) requires that a covered clearing agency [8] shall establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the Act; establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.[9]

The Commission finds that the proposed rule change is consistent with Section 17A of the Act and Rule 17Ad–22 thereunder. In particular, the Commission finds that the amendments will clarify aspects of ICE Clear Europe's governance framework and thus, in ICE Clear Europe's view, facilitate the efficient operation of the clearing house and the prompt and accurate clearance and settlement of transactions. The Commission believes that these amendments are consistent with ICE Clear Europe's obligation to have governance arrangements that are clear and transparent, prioritize the safety and efficiency of the clearing agency, and support the public interest requirements in Section 17A of the Act and the objectives of owners and participants. Finally, with respect to potential conflicts of interest concerning matters in the ordinary course in which directors' interests are affected, the Commission believes that this provision is consistent with the requirement that the rules of a clearing agency assure a fair representation of its participants in the administration of its affairs. ICE Clear Europe has represented that these provisions are not intended to result in the recusal or disqualification of member-affiliated directors as a class,[10] but rather could result in recusal on a case-by-case basis depending on the conflict. Further, any recusal is not automatic; rather, ICE Clear Europe's shareholders or the remaining directors have the ability to determine whether full or limited participation by the interested director is appropriate. Moreover, ICE Clear Europe currently affords members participation in product risk committees and on the Board's Risk Committee.

Relying on these findings and assurances, the Commission believes that the proposed rule change is consistent with Sections 17A(b)(3)(C) and (F) of the Act,[11] and Rule 17Ad–22(e)(2) thereunder.[12]

## IV. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–ICEEU–2017–007) be, and hereby is, approved.[13]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14246 Filed 7–6–17; 8:45 am]

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[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] The ''rules of a clearing agency'' include its articles of incorporation and bylaws. 15 U.S.C. 78c(a)(27).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] *See* 17 CFR 240.17Ad–22(a)(5) (defining ''covered clearing agency'').

[9] *See* 17 CFR 240.17Ad–22(e)(2).

[10] In particular, ICE Clear Europe has represented that the recusal provisions in proposed Article 53 of its Shareholder Articles would not prohibit member-affiliated directors from participating in decisions relating to margin levels as a general matter, decisions to clear new contracts, or other similar general matters that are applicable to all members or particular classes of clearing members.

[11] 15 U.S.C. 78q–1(b)(3)(C) and (F).

[12] 17 CFR 240.17Ad–22(e)(2).

[13] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81070; File No. SR–BatsBZX–2017–26]**

## Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Approving a Proposed Rule Change, To Amend BZX Rule 14.11 To Provide for the Inclusion of Cash in an Index Underlying a Series of Index Fund Shares

June 30, 2017.

### I. Introduction

On May 12, 2017, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), 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] a proposed rule change to amend BZX Rule 14.11 to provide for the inclusion of cash in an index underlying a series of Index Fund Shares. The proposed rule change was published for comment in the **Federal Register** on May 25, 2017.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

### II. Description of the Proposal

BZX Rules 14.11(c)(3) and 14.11(c)(4) permit the Exchange to generically list Index Fund Shares (''Shares'') that overlie an index or portfolio of U.S. Component Stocks,[5] Non-U.S. Component Stocks,[6] U.S. Component Stocks and Non-U.S. Component Stocks, and Fixed Income Securities [7] that meets specified criteria. Although open-end investment management companies may hold cash, currently, the generic listing criteria of BZX Rules 14.11(c) do not contemplate the generic listing of Shares overlying an index or portfolio with a cash component.

The Exchange proposes to amend BZX Rules 14.11(c)(3) and 14.11(c)(4) to permit the generic listing and trading of Shares overlying an index or portfolio of cash and: (1) U.S. Component Stocks; (2) Non-U.S. Component Stocks; (3) U.S. Component Stocks and Non-U.S. Component Stocks; and (4) Fixed Income Securities. The Exchange is not proposing to otherwise amend the applicable generic listing criteria, except to specify that the following generic listing criteria will not apply to the cash portion of the index or portfolio:

- Under proposed BZX Rule 14.11(c)(3)(A)(i)(a) through (d), the percentage weighting requirements would apply only to the U.S. Component Stocks portion of the underlying index or portfolio.
- Under proposed BZX Rule 14.11(c)(3)(A)(ii)(a) through (d), the percentage weighting requirements would not apply to the cash component of the underlying index or portfolio.
- Under proposed BZX Rule 14.11(c)(4)(B)(i)(b), (d), and (f), the percentage weighting requirements would apply only to the Fixed Income Securities portion of the underlying index or portfolio.

The Exchange does not propose any limit to the weighting of cash in an index or portfolio underlying a series of Shares.[8] The Commission notes that, under a provision of its current rule, the Exchange may generically list Shares overlying a combination of indexes so long as each index satisfies the generic listing criteria.[9]

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] 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, 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 permitting the Exchange to generically list Shares that overlie an index or portfolio with a cash component may enhance competition among generically listed Shares, to the benefit of investors and the marketplace. Additionally, the Commission believes that the generic listing criteria referenced above, applicable only to the non-cash portion(s) of the index or portfolio will neither dilute the generic listing criteria nor render the indexes or portfolios underlying generically listed Shares more susceptible to manipulation.[12] Lastly, the Commission notes that it recently approved a substantively similar proposal by another national securities exchange.[13]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [14] and the rules and regulations thereunder applicable to a national securities exchange.

### IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[15] that the proposed rule change (SR–BatsBZX–2017–26) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14248 Filed 7–6–17; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 80728 (May 19, 2017), 82 FR 24171 (''Notice'').

[5] ''U.S. Component Stock'' is defined in BZX Rule 14.11(c)(1)(D) as an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

[6] ''Non-U.S. Component Stock'' is defined in BZX Rule 14.11(c)(1)(E) as an equity security that (a) is not registered under Sections 12(b) or 12(g) of Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

[7] BZX Rule 14.11(c)(4) defines Fixed Income Securities as debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

[8] *See* Notice, *supra* note 4, 82 FR at 24172.

[9] *See* BZX Rule 14.11(c)(5).

[10] 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).

[11] 15 U.S.C. 78f(b)(5).

[12] The Commission also notes that the Exchange represents that it has in place surveillance procedures that are adequate to properly monitor trading in Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. *See* Notice, *supra* note 4, 82 FR at 24172.

[13] *See* Securities Exchange Act Release No. 80777 (May 25, 2017), 82 FR 25378 (June 1, 2017) (SR–NYSEArca–2017–30).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81062; File No. SR–NYSEArca–2017–56]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Facilitate the Listing and Trading of Certain Series of Investment Company Units Listed Pursuant to NYSE Arca Equities Rule 5.2(j)(3)

June 30, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 19, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to facilitate the listing and trading of certain series of Investment Company Units listed pursuant to NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange proposes to facilitate the listing and trading of certain series of Investment Company Units that do not otherwise meet the standards set forth in Commentary.02 to Rule 5.2(j)(3). Specifically, the Exchange proposes to facilitate the listing and trading of the following series of Investment Company Units based on a multistate index of fixed income municipal bond securities: iShares National Muni Bond ETF, iShares Short-Term National Muni Bond ETF, VanEck Vectors AMT-Free Intermediate Municipal Index ETF, VanEck Vectors AMT-Free Long Municipal Index ETF, VanEck Vectors AMT-Free Short Municipal Index ETF, VanEck Vectors High-Yield Municipal Index ETF, VanEck Vectors Pre-Refunded Municipal Index ETF, PowerShares VRDO Tax-Free Weekly Portfolio, SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF and SPDR Nuveen Bloomberg Barclays Municipal Bond ETF (collectively, the ''Multistate Municipal Bond Funds'').

In addition, the Exchange proposes to facilitate the listing and trading of the following series of Investment Company Units based on a single-state index of fixed income municipal bond securities: iShares California Muni Bond ETF and the iShares New York Muni Bond ETF (collectively, the ''Single-state Municipal Bond Funds'' and, together with the Multistate Municipal Bond Funds, the ''Municipal Bond Funds'').

Each of the Municipal Bond Funds listed on the Exchange prior to 2010 and is based on an index of fixed-income municipal bond securities. Commentary .02 to Rule 5.2(j)(3) sets forth the generic listing requirements for an index of fixed income securities underlying a series of Investment Company Units. One of the enumerated listing requirements is that component fixed income securities that, in the aggregate, account for at least 75% of the weight of the index each shall have a minimum principal amount outstanding of $100 million or more.[4] The Exchange proposes to facilitate the listing and trading of the Municipal Bond Funds notwithstanding the fact that the indices on which they are based do not meet the requirements of Commentary .02(a)(2) to Rule 5.2(j)(3). Each of the indices on which the Municipal Bond Funds are based meet all of the other requirements of such rule.[5]

[4] *See* Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3).

[5] The Commission previously has approved proposed rule changes relating to listing and trading on the Exchange of Units based on municipal bond indexes. *See* Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 67729 (August 24, 2012), 77 FR 52776 (August 30, 2012) (SR–NYSEArca–2012–92) (notice of proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02) (''iShares 2018 Notice''); 72523, (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR–NYSEArca–2014–37) (order approving proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72172 (May 15, 2014), 79 FR 29241 (May 21, 2014) (SR–NYSEArca–2014–37) (notice of proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02) (''iShares 2020 Notice''); 72464 (June 25, 2014), 79 FR 37373 (July 1, 2014) (File No. SR–NYSEArca–2014–45) (order approving proposed rule change governing the continued listing and trading of shares of the PowerShares Insured California Municipal Bond Portfolio, PowerShares Insured National Municipal Bond Portfolio, and PowerShares Insured New York Municipal Bond Portfolio) (''PowerShares Order''); 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SR–NYSEArca–2015–25) (order approving proposed rule change relating to the listing and trading of iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF under NYSE Arca Equities Rule 5.2(j)(3)) (''iShares 2021/2022 Order''); 74730 (April 15, 2015), 76 FR 22234 (April 21, 2015) (notice of proposed rule change relating to the listing and trading of iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02) (''iShares 2021/2022 Notice''); 74730 75376 (July 7, 2015), 80 FR 40113 (July 13, 2015) (SR–NYSEArca–2015–18) (order approving proposed rule change relating to the listing and trading of Vanguard Tax-Exempt Bond Index Fund under NYSE Arca Equities Rule 5.2(j)(3)). The Commission also has issued a notice of filing and immediate effectiveness of a proposed rule change relating to listing and trading on the Exchange of shares of the iShares Taxable Municipal Bond Fund. *See* Securities Exchange Act Release No. 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR–NYSEArca–2010–94). The Commission has approved for Exchange listing and trading of shares of actively managed funds of [sic] that principally hold municipal bonds. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund); 79293 (November 10, 2016), 81 FR 81189 (November 17, 2016) (SR–NYSEArca–2016–107) (order approving listing and trading of shares of Cumberland Municipal Bond ETF). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No.63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

The Exchange believes it is appropriate to facilitate the listing and trading of the Municipal Bond Funds because each such fund is based on a broad-based index of fixed income municipal bond securities that is not readily susceptible to manipulation. As of April 1, 2017, the indices on which the Municipal Bond Funds are based had the following characteristics:

1. The iShares National Muni Bond ETF is based on the S&P National AMT-Free Municipal Bond Index, which included 11,333 component fixed income municipal bond securities from issuers in 47 different states or U.S. territories. The most heavily weighted security in the index represented approximately 0.25% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented less than 1% of the total weight of the index. Approximately 99.29% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 31.79% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $628,460,731,594 and the average dollar amount outstanding of issues in the index was approximately $55,454,048.

2. The iShares Short Term National Muni Bond ETF is based on the S&P Short Term National AMT-Free Municipal Bond Index, which included 3,309 component fixed income municipal bond securities from issuers in 44 different states or U.S. territories. The most heavily weighted security in the index represented approximately 1% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2% of the total weight of the index. Approximately 98.22% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 27.63% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $166,147,941,156 and the average dollar amount outstanding of issues in the index was approximately $50,210,922.

3. The VanEck Vectors AMT-Free Intermediate Municipal Index ETF is based on the Bloomberg Barclays AMT-Free Intermediate Continuous Municipal Index, which included 17,272 component fixed income municipal bond securities from issuers in 50 different states or U.S. territories. The most heavily weighted security in the index represented less than 0.25% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 0.50% of the total weight of the index. Approximately 96.13% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 7.75% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $340,102,539,050 and the average dollar amount outstanding of issues in the index was approximately $19,690,976.

4. The VanEck Vectors AMT-Free Long Municipal Index ETF is based on the Bloomberg Barclays AMT-Free Long Continuous Municipal Index, which included 7,657 component fixed income municipal bond securities from issuers in 50 different states or U.S. territories. The most heavily weighted security in the index represented less than 0.50% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 1.25% of the total weight of the index. Approximately 93.84% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 32.34% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $279,575,285,082 and the average dollar amount outstanding of issues in the index was approximately $36,512,379.

5. The VanEck Vectors AMT-Free Short Municipal Index ETF is based on the Bloomberg Barclays AMT-Free Short Continuous Municipal Index, which included 7,229 component fixed income municipal bond securities from issuers in 48 different states or U.S. territories. The most heavily weighted security in the index represented approximately 1% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2.25% of the total weight of the index. Approximately 94.4% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 13.60% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $152,020,140,995 and the average dollar amount outstanding of issues in the index was approximately $21,026,299.

6. The VanEck Vectors High-Yield Municipal Index ETF is based on the Bloomberg Barclays Municipal Custom High Yield Composite Index, which included 4,702 component fixed income municipal bond securities from issuers in 50 different states or U.S. territories. The most heavily weighted security in the index represented approximately 1.25% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 6% of the total weight of the index. Approximately 75.16% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 43.26% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $224,318,153,150 and the average dollar amount outstanding of issues in the index was approximately $47,706,966.

7. The VanEck Vectors Pre-Refunded Municipal Index ETF is based on the Bloomberg Barclays Municipal Pre-Refunded-Treasury-Escrowed Index, which included 3,691 component fixed income municipal bond securities from issuers in 50 different states or U.S. territories. The most heavily weighted security in the index represented approximately 0.50% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2.25% of the total weight of the index. Approximately 93.70% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 19.23% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $94,289,476,486 and the average dollar amount outstanding of issues in the index was approximately $25,545,780.

8. The PowerShares VRDO Tax-Free Weekly Portfolio is based on the Bloomberg US Municipal AMT-Free Weekly VRDO Index, which included 1,494 component fixed income municipal bond securities from issuers in 49 different states or U.S. territories. The most heavily weighted security in the index represented approximately 0.75% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2.75% of the total weight of the index. Approximately 44.76% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 34.88% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding

of issues in the index was approximately $68,489,564,000 and the average dollar amount outstanding of issues in the index was approximately $45,843,082.

9. The SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF is based on the Bloomberg Barclays Managed Money Municipal Short Term Index, which included 4,263 component fixed income municipal bond securities from issuers in 44 different states or U.S. territories. The most heavily weighted security in the index represented approximately 0.75% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2% of the total weight of the index. Approximately 94.54% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 10.82% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $85,187,709,681 and the average dollar amount outstanding of issues in the index was approximately $19,983,042.

10. The SPDR Nuveen Bloomberg Barclays Municipal Bond ETF is based on the Bloomberg Barclays Municipal Managed Money Index, which included 22,247 component fixed income municipal bond securities from issuers in 48 different states or U.S. territories. The most heavily weighted security in the index represented less than 0.25% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 0.50% of the total weight of the index. Approximately 95.05% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 13.35% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $496,240,108,998 and the average dollar amount outstanding of issues in the index was approximately $22,305,934.

11. The iShares California Muni Bond ETF is based on the S&P California AMT-Free Municipal Bond Index, which included 2,115 component fixed income municipal bond securities from more than 150 distinct municipal bond issuers in the State of California. The most heavily weighted security in the index represented approximately 0.50% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2.75% of the total weight of the index. Approximately 96.31% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 38.89% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $137,796,471,640 and the average dollar amount outstanding of issues in the index was approximately $65,151,996.

12. The iShares New York Muni Bond Fund is based on the S&P New York AMT-Free Municipal Bond Index, which included 2,191 component fixed income municipal bond securities from more than 20 distinct municipal bond issuers in the State of New York. The most heavily weighted security in the index represented approximately 1.50% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 4.25% of the total weight of the index. Approximately 98.63% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 34.50% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $124,381,556,872 and the average dollar amount outstanding of issues in the index was approximately $56,769,309.

Based on the characteristics of each index as described above, the Exchange believes it is appropriate to facilitate the listing and trading of the Municipal Bond Funds. Each index underlying the Municipal Bond Funds satisfies all of the generic listing requirements for Investment Company Units based on a fixed income index, except for the minimum principal amount outstanding requirement of Commentary .02(a)(2) to Rule 5.2(j)(3). A fundamental purpose behind the minimum principal amount outstanding requirement is to ensure that component securities of an index are sufficiently liquid such that the potential for index manipulation is reduced.

As described above, each index underlying the Multistate Municipal Bond Funds is broad-based and currently includes, on average, more than 8,000 component securities. Whereas the generic listing rules require that an index contain securities from a minimum of 13 non-affiliated issuers,[6] each index underlying the Multistate Municipal Bond Funds currently includes securities issued by municipal entities in more than 40 states or U.S. territories. Further, whereas the generic listing rules permit a single component security to represent up to 30% of the weight of an index and the top five component securities to, in aggregate, represent up to 65% of the weight of an index,[7] no single security currently represents more than approximately 1.5% of the weight of any index underlying the Multistate Municipal Bond Funds. Similarly, the aggregate weight of the five most heavily weighted securities in each index does not exceed approximately 6%. The Exchange believes that this significant diversification and the lack of concentration among constituent securities provides a strong degree of protection against index manipulation.

Each index on which the Single-state Municipal Bond Funds is based is similarly well diversified to protect against index manipulation. On average, the indices underlying the Single-state Municipal Bond Funds include more than 1,500 securities. Each index includes securities from at least 20 distinct municipal bond issuers and the most heavily weighted security in any of the indices underlying the Single-state Municipal Bond Funds represents approximately 2% and the aggregate weight of the five most heavily weighted securities in any of the indices represents approximately 6.25% of the total index weight.

On a continuous basis, each index underlying a Municipal Bond Fund will contain at least 500 component securities.[8] In addition, the Exchange represents that: (1) Except for Commentary .02(a)(2) to Rule 5.2(j)(3), each index currently satisfies all of the generic listing standards under Rule 5.2(j)(3); (2) the continued listing standards under Rules 5.2(j)(3) (except for Commentary .02(a)(2)) and 5.5(g)(2) applicable to Investment Company Units will apply to the shares of each Municipal Bond Fund; and (3) the issuer of each Municipal Bond Fund is

[6] *See* Commentary .02(a)(5) to NYSE Arca Equities Rule 5.2(j)(3).

[7] *See* Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3).

[8] The Commission has previously approved a proposed rule change relating to the listing and trading on the Exchange of a series of Investment Company Units based on a municipal bond index that did not satisfy Commentary .02(a)(2) of Rule 5.2(j)(3) provided that such municipal bond index contained at least 500 component securities on a continuous basis. *See* Securities Exchange Act Release No. 79767 (January 10, 2017), 82 FR 4950 (January 17, 2017) (SR–NYSEArca–2016–62) (order approving proposed rule change relating to the listing and trading of the PowerShares Build America Bond Portfolio). The total dollar amount of issues in the index underlying the PowerShares Build America Bond Portfolio was approximately $281,589,346,769 and the average dollar amount outstanding of issues in the index was approximately $27,808,547. Those metrics are comparable to the metrics of the indices underlying the Municipal Bond Funds.

required to comply with Rule 10A–3 [9] under the Act for the initial and continued listing of the shares of each Municipal Bond Fund. In addition, the Exchange represents that the shares of each Municipal Bond Fund will comply with all other requirements applicable to Investment Company Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the underlying index and the applicable Intraday Indicative Value (''IIV''),[10] rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin to Equity Trading Permit Holders (''ETP Holders''), as set forth in Exchange rules applicable to Investment Company Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Investment Company Units.[11]

The current value of each index underlying the Municipal Bond Funds is widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (b)(ii). The IIV for shares of each Municipal Bond Fund is disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (c). In addition, the portfolio of securities held by each Municipal Bond Fund is disclosed daily on each Municipal Bond Fund's Web site.

The Exchange notes that each of the Municipal Bond Funds has been listed on the Exchange for at least eight years [12] and that, during such time, the Exchange has not become aware of any potential manipulation of the underlying indices. Further, the Exchange's existing rules require that the Municipal Bond Funds notify the Exchange of any material change to the methodology used to determine the composition of the index.[13] Therefore, if the methodology of an index underlying the Municipal Bond Funds was changed in a manner that would materially alter its existing composition, the Exchange would have advance notice and would evaluate the index, as modified, to determine whether it was sufficiently broad-based and well diversified.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [14] 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 of each Municipal Bond Fund will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3) (except for Commentary .02(a)(2)). The Exchange represents that trading in the shares of each Municipal Bond Fund 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 federal securities laws applicable to trading on the Exchange.[15] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the shares of each Municipal Bond Fund in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the shares of each Municipal Bond Fund with other markets that are members of the Intermarket Surveillance Group (''ISG''). In addition, the Exchange will communicate as needed regarding trading in the shares of each Municipal Bond Fund with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the shares of each Municipal Bond Fund. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

As discussed above, the Exchange believes that each index underlying the Municipal Bond Funds is sufficiently broad-based to deter potential manipulation. Each index underlying the Multistate Municipal Bond Funds currently includes, on average, more than 8,000 component securities. Whereas the generic listing rules require that an index contain securities from a minimum of 13 non-affiliated issuers,[16] each index underlying the Multistate Municipal Bond Funds currently includes securities issued by municipal entities in more than 40 states or U.S. territories. Further, whereas the generic listing rules permit a single component security to represent up to 30% of the weight of an index and the top five component securities to, in aggregate, represent up to 65% of the weight of an index,[17] no single security currently represents more than approximately 1.5% of the weight of any index underlying the Multistate Municipal Bond Funds. Similarly, the aggregate weight of the five most heavily weighted securities in each index does not exceed approximately 6%.

Further, the indices underlying the Single-state Municipal Bond Funds include, on average, more than 1,500 securities. Each such index includes securities from at least 20 distinct municipal bond issuers and the most heavily weighted security in any of the indices underlying the Single-state Municipal Bond Funds represents approximately 2% and the aggregate weight of the five most heavily weighted securities in any of the indices represents approximately 6.25% of the total index weight.

[9] 17 CFR 240.10A–3.

[10] The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4:00 p.m., Eastern time. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

[11] *See, e.g.,* Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

[12] The VanEck Vectors High-Yield Municipal Index ETF is the most recently listed of the Multistate Municipal Bond Funds and listed on the Exchange on February 5, 2009.

[13] *See* NYSE Arca Equities Rule 5.3(i)(1)(i)(P).

[14] 15 U.S.C. 78f(b)(5).

[15] 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.

[16] *See* Commentary .02(a)(5) to NYSE Arca Equities Rule 5.2(j)(3).

[17] *See* Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3).

On a continuous basis, each index underlying a Municipal Bond Fund will contain at least 500 component securities.

The Exchange believes that, within a single municipal bond issuer, separate issues by the same issuer are likely to trade similarly to one another. In addition, the Exchange believes that individual CUSIPs within each index underlying the Municipal Bond Funds that share characteristics with other CUSIPs have a high yield to maturity correlation, and frequently have a correlation of one or close to one.

In support of its proposed rule change, the Exchange notes that the Commission has previously approved a rule change to facilitate the listing and trading of series of Investment Company Units based on an index of municipal bond securities that did not otherwise meet the generic listing requirements of NYSE Arca Rule 5.2(j)(3). For example, the Commission previous [sic] approved the listing and trading of the PowerShares Insured California Municipal Bond Portfolio, PowerShares Insured National Municipal Bond Portfolio and the PowerShares Insured New York Municipal Bond Portfolio (the ''PowerShares Municipal Bond Funds'') notwithstanding the fact that the index underlying each fund did not satisfy the criteria of Commentary .02(a)(2) to Rule 5.2(j)(3).[18] In finding such proposal to be consistent with the Act and the rules regulations thereunder, the Commission noted that each underlying index was sufficiently broad-based to deter potential manipulation. The Exchange believes that each of the indices underlying the Municipal Bond Funds shares comparable characteristics to the indices underlying the PowerShares Municipal Bond Funds.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Municipal Bond Funds, thereby promoting market transparency. Each Municipal Bond Fund's portfolio holdings will be disclosed on such Municipal Bond Fund's Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV for shares of each Municipal Bond Fund will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The current value of each index underlying the Municipal Bond Funds will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the shares of each Municipal Bond Fund will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for each Municipal Bond Fund will include the prospectus for such Municipal Bond Fund and additional data relating to net asset value (''NAV'') and other applicable quantitative information. If the Exchange becomes aware that a Municipal Bond Fund's NAV is not being disseminated to all market participants at the same time, it will halt trading in the shares of such Municipal Bond Fund until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the shares of a Municipal Bond Fund. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares of a particular Municipal Bond Fund inadvisable. If the IIV and index value are not being disseminated for a particular Municipal Bond Fund as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the IIV or index value occurs. If the interruption to the dissemination of an IIV or index value persists past the trading day in which it occurred, the Corporation will halt trading. Trading in the shares of a Municipal Bond Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares of a particular Municipal Bond Fund inadvisable, and trading in the shares of each Municipal Bond Fund will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which such shares may be halted. In addition, investors will have ready access to information regarding the applicable IIV, and quotation and last sale information for the shares of each Municipal Bond Fund. Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system.

All statements and representations made in this filing regarding (a) the description of each Municipal Bond Fund's portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the shares of each Municipal Bond Fund on the Exchange. Each issuer of the Municipal Bond Funds is required to advise the Exchange of any failure by its Municipal Bond Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Municipal Bond Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m).

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 exchange-traded products that principally hold municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange has in place surveillance procedures relating to trading in the shares of each Municipal Bond Fund 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, investors will have ready access to information regarding the IIV and quotation and last sale information for the shares of each Municipal Bond Fund.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange notes that the proposed rule change will facilitate the listing and trading of exchange-traded products that hold municipal securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

[18] *See* Securities Exchange Act Release No. 72464 (June 25, 2014), 79 FR 37373 (July 1, 2014) (File No. SR–NYSEArca–2014–45).

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–56 in 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–2017–56. This file number should be included in 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 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 Number SR–NYSEArca–2017–56 and should be submitted on or before July 28, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14242 Filed 7–6–17; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81067; File Nos. SR–BatsBYX–2017–11; SR–BatsBZX–2017–38; SR–BatsEDGA–2017–13; SR–BatsEDGX–2017–22; SR–BOX–2017–16; SR–BX–2017–023; SR–C2–2017–017; SR–CBOE–2017–040; SR–CHX–2017–08; SR–FINRA–2017–011; SR–GEMX–2017–17; SR–IEX–2017–16; SR–ISE–2017–45; SR–MIAX–2017–18; SR–MRX–2017–04; SR–NASDAQ–2017–046; SR–NYSE–2017–22; SR–NYSEArca–2017–52; SR–NYSEMKT–2017–26; SR–PEARL–2017–20; SR–PHLX–2017–37]**

## Self-Regulatory Organizations; Bats BYX Exchange, Inc; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors' Exchange LLC; Miami International Securities Exchange, LLC; MIAX PEARL LLC; NASDAQ BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Arca, Inc. and NYSE MKT LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Establish Fees for Industry Members To Fund the Consolidated Audit Trail

June 30, 2017.

I. Introduction

On May 1, 2017,[1] May 2, 2017,[2] May 3, 2017,[3] May 8, 2017,[4] May 9, 2017,[5] May 10, 2017,[6] May 12, 2017,[7] May 15,

[1] Miami International Securities Exchange, LLC and MIAX PEARL LLC filed their proposed rule changes on May 1, 2017.

[2] The NASDAQ Stock Market LLC and NASDAQ BX, Inc. filed their proposed rule changes on May 2, 2017.

[3] Chicago Stock Exchange, Inc. filed its proposed rule change on May 3, 2017.

[4] Financial Industry Regulatory Authority, Inc. filed its proposed rule change on May 8, 2017.

[5] Investors' Exchange LLC originally filed its proposed rule change on May 3, 2017 under File No. SR–IEX–2017–13, and subsequently withdrew that filing and filed this proposed rule change on May 9, 2017.

[6] The New York Stock Exchange LLC, NYSE Arca, Inc. and NYSE MKT LLC filed their proposed rule changes on May 10, 2017.

[7] NASDAQ GEMX LLC, NASDAQ ISE, LLC, NASDAQ MRX, LLC and NASDAQ PHLX LLC originally filed their proposed rule changes on May 3, 2017 under File Nos. SR–GEMX–2017–11, SR–ISE–2017–40, SR–MRX–2017–03, and SR–PHLX–2017–35, and subsequently withdrew those filings and filed these proposed rule changes on May 12, 2017.

2017,[8] May 16, 2017,[9] and May 23, 2017,[10] Bats BYX Exchange, Inc. (''Bats BYX''), Bats BZX Exchange, Inc. (''Bats BZX''), Bats EDGA Exchange, Inc. (''Bats EDGA''), Bats EDGX Exchange, Inc. (''Bats EDGX''), BOX Options Exchange LLC (''BOX''), C2 Options Exchange, Incorporated (''C2''), Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc. (''CHX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC (''IEX''), Nasdaq ISE, LLC (''ISE''), Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''PEARL''), NASDAQ BX, Inc. (''BX''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX''), NASDAQ PHLX LLC (''Phlx''), The Nasdaq Stock Market LLC (''Nasdaq''), New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC (''NYSE MKT'') (collectively, the ''Participants'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [11] and Rule 19b–4 thereunder,[12] proposed rule changes to adopt fees to be charged to Industry Members [13] to fund the consolidated audit trail (''CAT'').[14] The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[15] The proposed rule changes submitted by MIAX and PEARL were published for comment in the **Federal Register** on May 19, 2017.[16] The proposed rule changes submitted by BX, CHX, IEX, Nasdaq, NYSE, NYSE Arca and NYSE MKT were published for comment in the **Federal Register** on May 22, 2017.[17] The proposed rule change submitted by FINRA was published for comment in the **Federal Register** on May 23, 2017.[18] The proposed rule changes submitted by BOX, GEMX, ISE, MRX and Phlx were published for comment in the **Federal Register** on May 24, 2017.[19] The proposed rule changes submitted by C2, CBOE and Bats EDGA were published for comment in the **Federal Register** on June 1, 2017.[20] The proposed rule change submitted by Bats BYX was published for comment in the **Federal Register** on June 5, 2017.[21] The proposed rule changes submitted by Bats BZX and Bats EDGX were published for comment in the **Federal Register** on June 6, 2017.[22] The Commission has received a number of comment letters on the proposed rule changes, and a response to comments from the Participants.[23]

Pursuant to Section 19(b)(3)(C) of the Act, the Commission is hereby: (1) temporarily suspending the proposed rule changes; and (2) instituting proceedings to determine whether to approve or disapprove the proposals.

## II. Summary of the Proposed Rule Change

Prior to filing the proposed rule changes, the Participants and NYSE National, Inc.[24] filed with the Commission, pursuant to Section 11A of the Exchange Act [25] and Rule 608 of Regulation NMS thereunder,[26] a national market system (''NMS'') plan to create, implement and maintain the CAT (the ''CAT NMS Plan'' or the ''Plan'').[27] The Plan was published for

[8] BOX Options Exchange LLC originally filed its proposed rule change on May 11, 2017 under File No. SR–BOX–2017–15, and subsequently withdrew that filing and filed this proposed rule change on May 15, 2017.

[9] Bats BYX Exchange, Inc., C2 Options Exchange, Incorporated and Chicago Board Options Exchange, Incorporated filed their proposed rule changes on May 16, 2017. Bats EDGA Exchange, Inc. originally filed its proposed rule change on May 5, 2017 under File No. SR–BatsEDGA–2017–11, and subsequently withdrew that filing on May 11, 2017 and filed this proposed rule change on May 16, 2017.

[10] Bats BZX Exchange, Inc. filed its proposed rule changes on May 23, 2017. Bats EDGX Exchange, Inc. originally filed its proposed rule change on May 5, 2017 under File No. SR–BatsEDGX–2017–20, and subsequently withdrew that filing on May 10, 2017 and filed this proposed rule change on May 23, 2017.

[11] 15 U.S.C. 78s(b)(1).

[12] 17 CFR 240.19b–4.

[13] Section 1.1 of the CAT NMS Plan defines ''Industry Member'' as ''a member of a national securities exchange or a member of a national securities association.''

[14] *See infra* notes 16–22.

[15] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[16] *See* Securities Exchange Act Release Nos. 80675 (May 15, 2017), 82 FR 23100 (May 19, 2017) (SR–MIAX–2017–18) (''Notice''); and 80676 (May 15, 2017), 82 FR 23083 (May 19, 2017) (SR–PEARL–2017–20).

[17] Securities Exchange Act Release Nos. 80697 (May 16, 2017), 82 FR 23398 (May 22, 2017) (SR–BX–2017–023); 80691 (May 16, 2017), 82 FR 23344 (May 22, 2017) (SR–CHX–2017–08); 80692 (May 16, 2017), 82 FR 23325 (May 22, 2017) (SR–IEX–2017–16); 80696 (May 16, 2017), 82 FR 23439 (May 22, 2017) (SR–NASDAQ–2017–046); 80693 (May 16, 2017), 82 FR 23363 (May 22, 2017) (SR–NYSE–2017–22); 80698 (May 16, 2017), 82 FR 23457 (May 22, 2017) (SR–NYSEArca–2017–52); and 80694 (May 16, 2017), 82 FR 23416 (May 22, 2017) (SR–NYSEMKT–2017–26).

[18] *See* Securities Exchange Act Release No. 80710 (May 17, 2017), 82 FR 23639 (May 23, 2017) (SR–FINRA–2017–011).

[19] *See* Securities Exchange Act Release Nos. 80721 (May 18, 2017), 82 FR 23864 (May 24, 2017) (SR–BOX–2017–16); 80713 (May 18, 2017), 82 FR 23956 (May 24, 2017) (SR–GEMX–2017–17); 80715 (May 18, 2017), 82 FR 23895 (May 24, 2017) (SR–ISE–2017–45); 80726 (May 18, 2017), 82 FR 23915 (May 24, 2017) (SR–MRX–2017–04); and 80725 (May 18, 2017), 82 FR 23935 (May 24, 2017) (SR–PHLX–2017–37).

[20] Securities Exchange Act Release Nos. 80786 (May 26, 2017), 82 FR 25474 (June 1, 2017) (SR–C2–2017–017); 80785 (May 26, 2017), 82 FR 25404 (June 1, 2017) (SR–CBOE–2017–040); and 80784 (May 26, 2017), 82 FR 25448 (June 1, 2017) (SR–BatsEDGA–2017–13).

[21] *See* Securities Exchange Act Release No. 80809 (May 30, 2017), 82 FR 25837 (June 5, 2017) (SR–BatsBYX–2017–11).

[22] *See* Securities Exchange Act Release Nos. 80822 (May 31, 2017), 82 FR 26148 (June 6, 2017) (SR–BatsBZX–2017–38); and 80821 (May 31, 2017), 82 FR 26177 (June 6, 2017) (SR–BatsEDGX–2017–22).

[23] Since the proposed rule changes are designed to adopt fees to be charged to Industry Members to fund CAT, the Commission is considering all comments received regardless of the comment file to which they were submitted. *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017) (''SIFMA Letter''), *available at: https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf;* Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017) (''Cerny & O'Malley Letter''), *available at: https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf;* Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017) (''OTC Markets Letter''), *available at: https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf;* Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017) (''FIA Letter''), *available at: https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf;* Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017) (''MFA Letter''), *available at: https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf;* and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017) (''Shatto Letter''), *available at: https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf.* The Commission also received a comment letter which is not pertinent to these proposed rule changes. *See* Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017) (''Smart Letter''), *available at: https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm.* The Commission also has received a letter from the Participants responding to the comments received. *See* Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017) (''Response from Participants''), *available at https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf.*

[24] NYSE National, Inc. ceased trading on February 1, 2017. *See* Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR–NSX–2017–04). Therefore, it did not submit a proposed rule change to adopt fees on Industy Members to fund CAT.

[25] 15 U.S.C. 78k–1.

[26] 17 CFR 242.608.

[27] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 23, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter

Continued

comment in the **Federal Register** on May 17, 2016,[28] and approved by the Commission, as modified, on November 15, 2016.[29] Under the CAT NMS Plan, the Operating Committee of a newly formed company—CAT NMS, LLC (the ''Company''), of which each Participant is a member—has the discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants and Industry Members will pay (''CAT Fees'').[30]

The Plan specified that, in establishing the funding of the Company, the Operating Committee shall establish ''a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; and (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).'' [31] Under the Plan, such fees are to be implemented in accordance with various funding principles, including an ''allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations'' and the ''avoid[ance of] any disincentives such as placing an inappropriate burden on competition and reduction in market quality.'' [32]

To establish CAT Fees, the Participants submitted the proposed rule changes. As noted above, the proposed rule changes adopt fees to be charged to Industry Members, including Industry Members that are Execution Venue ATSs, which are described below.[33] The Participants also submitted an amendment to the Plan on May 23, 2017 [34] to establish the CAT Fees to be charged to themselves.[35]

*A. Industry Member Tiers*

The proposed rule changes establish fixed fees to be payable by Industry Members, based on message traffic.[36] Under the proposed rule changes, each Industry Member (other than Execution Venue ATSs [37]) will be ranked by message traffic and assigned to one of nine tiers that have been predefined by percentages (the ''Industry Member Percentages'').[38] The Participants noted that the percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation'').[39]

The following table sets forth the specific Industry Member Percentages and Industry Member Recovery Allocations: [40]

| Industry member tier | Percentage of industry members | Percentage of industry member recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 0.500 | 8.50 | 6.38 |
| Tier 2 | 2.500 | 35.00 | 26.25 |
| Tier 3 | 2.125 | 21.25 | 15.94 |
| Tier 4 | 4.625 | 15.75 | 11.81 |
| Tier 5 | 3.625 | 7.75 | 5.81 |
| Tier 6 | 4.000 | 5.25 | 3.94 |
| Tier 7 | 17.500 | 4.50 | 3.38 |
| Tier 8 | 20.125 | 1.50 | 1.13 |
| Tier 9 | 45.000 | 0.50 | 0.38 |
| Total | 100 | 100 | 75 |

The Participants explained that, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.[41] The Participants stated that prior to the start of CAT reporting, (1) orders will be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, as well as order routes and executions originated by a member of FINRA, (2) cancels will be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, and (3) quotes will be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.[42] After an Industry

from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[28] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (''CAT NMS Plan Notice'').

[29] Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[30] Section 11.1(b) of the CAT NMS Plan.

[31] Section 11.2(c) of the CAT NMS Plan. *See* Article XI of the CAT NMS Plan for additional detail; *see also, e.g.,* Notice, *supra* note 16, at 23102–04 for additional description of the CAT NMS Plan requirements.

[32] *See* Section 11.2(b) and (e) of the CAT NMS Plan.

[33] For additional details regarding these fees, *see, e.g.,* Notice, *supra* note 16.

[34] The Participants initially submitted the amendment on May 9, 2017, but subsequently withdrew the amendment and refiled the current submission on May 23, 2017.

[35] *See* Securities Exchange Act Release No. 80930 (June 14, 2017), 82 FR 28180 (June 20, 2017).

[36] The CAT NMS Plan provides that the CAT Fees payable by Industry Members shall include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by an Industry Member and (ii) routing orders to and from any ATS sponsored by an Industry Member. *See* Section 11.3(b) of the CAT NMS Plan. The Participants noted, however, that Industry Member fees will not be applicable to an ATS that qualifies as an Execution Venue. *See, e.g.,* Notice, *supra* note 16, at 23104.

[37] The Participants defined ''Execution Venue ATSs'' as alternative trading systems that execute transactions in Eligible Securities. *See, e.g.,* Notice, *supra* note 16, at 23101.

[38] *See, e.g., id.* at 23104.

[39] *See, e.g., id.*

[40] *See, e.g., id.* at 23105–06.

[41] *See, e.g., id.* at 23106. The Commission approved exemptive relief allowing options market-maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the options market-maker. *See* Securities Exchange Act Release No. 77265 (March 1, 2017), 81 FR 11856 (March 7, 2016). The Participants stated that this exemption applies to options market-maker quotes for CAT reporting purposes only. Therefore, the Participants indicated that options market-maker quotes will be included in the calculation of total message traffic for options market-maker under their proposed rule changes. *See, e.g.,* Notice, *supra* note 16, at 23106 n.36.

[42] *See, e.g., id.* at 23106.

Member begins reporting to the CAT, the Participants noted that ''message traffic'' will be calculated based on the Industry Member's Reportable Events.[43]

*B. Execution Venue Tiers*

For purposes of determining the CAT Fees for ATSs, the Participants categorized ATSs (excluding ATSs that do not execute orders) as Execution Venues.[44] Furthermore, the proposed rule changes set different tiers for Equity and Options Execution Venues.

1. NMS Stocks and OTC Equity Securities

The proposed rule changes establish fixed fees to be paid by Execution Venues depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities. Market share for Execution Venues will be calculated by share volume, except the market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, excluding the share volume reported to such national securities association by an Execution Venue.[45]

Under the proposed rule changes, each Equity Execution Venue will be ranked by market share and assigned to one of two tiers that have been predefined by percentages (the ''Equity Execution Venue Percentages'').[46] The Participants noted that the percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation'').[47]

The following table sets forth the specific Equity Execution Venue Percentages and Equity Execution Recovery Allocations:[48]

| Equity execution venue tier | Percentage of equity execution venues | Percentage of execution venue recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 25.00 | 26.00 | 6.50 |
| Tier 2 | 75.00 | 49.00 | 12.25 |
| Total | 100 | 75 | 18.75 |

2. Listed Options

The proposed rule changes establish fixed fees to be paid by Execution Venues depending on the Listed Options market share of that Execution Venue. Market share for Execution Venues will be calculated by contract volume.[49] Under the proposed rule changes, each Options Execution Venue will be ranked by market share and assigned to one of two tiers that have been predefined by percentages (the ''Options Execution Venue Percentages'').[50] The Participants noted that the percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation'').[51]

The following table sets forth the specific Options Execution Venue Percentages and Options Execution Venue Recovery Allocations:[52]

| Options execution venue tier | Percentage of options execution venues | Percentage of execution venue recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 75.00 | 20.00 | 5.00 |
| Tier 2 | 25.00 | 5.00 | 1.25 |
| Total | 100 | 25 | 6.25 |

3. Tier Assignments

The Participants stated that market share for Execution Venues will be sourced from data reported to the CAT System after the commencement of CAT reporting.[53] Prior to the commencement of CAT reporting, the Participants stated that market share for Execution Venues will be sourced from publicly-available market data, including data made publicly available by Bats and FINRA.[54]

*C. Allocation of Costs*

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Participants stated that the Operating Committee decided that 75% of total costs recovered will be allocated to Industry Members (other than Execution Venue ATSs) and 25% will be allocated to Execution Venues.[55] In determining the cost allocation between Equity Execution Venues and Options Execution Venues, the Participants stated that the Operating Committee further determined to allocate 75% of Execution Venue costs recovered to Equity Execution Venues and 25% to Options Execution Venues.[56]

*D. Fee Levels*

The Participants explained that the sum of the CAT Fees is designed to

[43] *See, e.g., id.* If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT reporting, or no Reportable Events after CAT reporting commences, the Participants stated that the Industry Member would not have a CAT Fee obligation. *See, e.g., id.* at n. 38.

[44] *See, e.g., id.* at 23106. Section 1.1 of the CAT NMS Plan defines ''Execution Venue'' as ''a Participant or an [ATS] (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).''

[45] Section 11.3(a)(i) of the CAT NMS Plan; *see also, e.g.,* Notice, *supra* note 16, at 23106–07.

[46] *See, e.g.,* Notice, *supra* note 16, at 23107.

[47] *See, e.g., id.*

[48] *See, e.g., id.*

[49] Section 11.3(a)(ii) of the CAT NMS Plan; *see also, e.g.,* Notice, *supra* note 16, at 23108.

[50] *See, e.g.,* Notice, *supra* note 16, at 23108.

[51] *See, e.g., id.*

[52] *See, e.g., id.*

[53] *See, e.g., id.*

[54] *See, e.g., id.*

[55] *See, e.g., id.* at 23109.

[56] *See, e.g., id.*

recover the total costs of building and operating the CAT. They stated that the Operating Committee has estimated overall CAT costs—including development and operational costs, third-party support costs (including historic legal fees, consulting fees, and audit fees), insurance costs, and operational reserve costs—to be $50,700,000 in total for the year beginning November 21, 2016.[57] The Participants stated that, based on the estimated costs and the calculations for the funding model, the Operating Committee determined to impose the following fees.

For Industry Members (other than Execution Venue ATSs): [58]

| Tier | Monthly CAT fee | Quarterly CAT fee | CAT fees paid annually |
|---|---|---|---|
| 1 | $33,668 | $101,004 | $404,016 |
| 2 | 27,051 | 81,153 | 324,612 |
| 3 | 19,239 | 57,717 | 230,868 |
| 4 | 6,655 | 19,965 | 79,860 |
| 5 | 4,163 | 12,489 | 49,956 |
| 6 | 2,560 | 7,680 | 30,720 |
| 7 | 501 | 1,503 | 6,012 |
| 8 | 145 | 435 | 1,740 |
| 9 | 22 | 66 | 264 |

For Equity Execution Venues: [59]

| Tier | Monthly CAT fee | Quarterly CAT fee | CAT fees paid annually |
|---|---|---|---|
| 1 | $21,125 | $63,375 | $253,500 |
| 2 | 12,940 | 38,820 | 155,280 |

For Options Execution Venues: [60]

| Tier | Monthly CAT fee | Quarterly CAT fee | CAT fees paid annually |
|---|---|---|---|
| 1 | $19,205 | $57,615 | $230,460 |
| 2 | 13,204 | 39,612 | 158,448 |

*E. Changes to Fee Levels and Tiers*

The Participants noted that Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate.'' [61] The Participants stated that, as part of such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary.[62] In addition, the Participants asserted that such reviews would consider the estimated ongoing CAT costs and the level of the operating reserve, in order to adjust CAT Fees as appropriate.[63] The Participants further stated that any changes to the CAT Fees will be filed with the Commission pursuant to Section 19(b) of the Exchange Act and become effective in accordance with the requirements of Section 19(b).[64]

*F. Initial and Periodic Tier Reassignments*

Under the proposed rule changes, the Operating Committee will assign fee tiers every three months based on market share or message traffic, as applicable, from the prior three months.[65] For the initial tier assignments, the Participants stated that the Company will calculate the relevant tier for each CAT Reporter using the prior three months of data.[66] The Participants explained the Company will calculate subsequent tier assignments using the three months of data prior to the relevant tri-monthly date.[67] The Participants noted that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.[68] According to the Participants, a CAT Reporter's assigned tier will depend not only on its own message traffic or market share, but also on the message traffic or market share across all CAT Reporters.[69]

*G. Timing and Manner of Payment*

The proposed rule changes state that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees, regardless of whether the Industry Member is a member of multiple Participants.[70] The proposed rule changes further state that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the

[57] *See, e.g., id.* The Participants further noted that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing. *See, e.g., id.* at n.41.

[58] *See, e.g., id.* at 23110.

[59] *See, e.g., id.*

[60] *See, e.g., id.*

[61] *See, e.g., id.* at 23115.

[62] *See, e.g., id.*

[63] *See, e.g., id.* The Participants further noted that any surplus of the Company's revenues over its expenses will be included within the operational reserve to offset future fees. *See, e.g., id.*

[64] *See, e.g., id.*

[65] *See, e.g., id.*

[66] *See, e.g., id.* The Participants indicated that such data will be comprised of historical equity and equity options orders, cancels, and quotes provided by the Participants over the previous three-month period. *See, e.g., id.; see also* notes 41–43 *supra* and accompanying text.

[67] *See, e.g.,* Notice, *supra* note 16, at 23115.

[68] *See, e.g., id.*

[69] *See, e.g., id.*

[70] *See, e.g., id.* at 23116.

manner prescribed by the Company.[71] The proposed rule changes also state that each Industry Member shall pay its CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated).[72] If an Industry Member fails to pay any such fee when due, the proposed rule changes require such Industry Member to pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.[73]

## III. Summary of Comments

As noted above, the Commission received a number of comment letters on the proposed rule changes [74] objecting to the proposals.[75]

### Necessity of the CAT

One commenter asks whether the CAT is a ''worthwhile endeavor,'' [76] arguing that the CAT is largely duplicative of existing electronic audit trails, and suggesting that the goals of the CAT can be accomplished at a fraction of the cost set forth in the filings.[77] The commenter also believes that the CAT is not justified in terms of costs and benefits and warns that any costs assessed to broker-dealers will ultimately be passed on to investors.[78] Similarly, another commenter believes that fees imposed on broker-dealers are likely to be passed through to investors, effectively limiting investor choice in execution venues.[79]

In response to the comment questioning the utility of the CAT, the Participants explain that they are obligated to build the CAT by Rule 613.[80] Further, the Participants state that the CAT NMS Plan requires them to eliminate existing systems and rules made duplicative by the CAT and that they have already filed proposals to accomplish this for certain such systems and rules.[81] The Participants add that the CAT is intended to replace the current audit trails (which vary in data and scope, among other ways) with a single, comprehensive audit trail.[82]

### Funding Authority

One commenter challenges the imposition of a CAT Fee on Industry Members, arguing that the Participants have not provided justification for imposing such a fee and that the Industry Members should not be obligated to pay any costs or expenses other than the direct costs to build and operate the CAT.[83] Two commenters note that broker-dealers already pay the Participants a significant amount in regulatory funding, and argue that costs other than the direct costs to build and operate the CAT (such as insurance and consulting) should be borne by the Participants as the costs they incur to do business as self-regulatory organizations, as well as any costs

[71] *See, e.g., id.* The Participants acknowledged, however, that no exact fee collection system has yet been established. *See, e.g., id.* at 23117.

[72] *See, e.g., id.*

[73] *See, e.g., id.*

[74] *See supra* note 23. In addition, SIFMA attaches its July 18, 2016 letter regarding the proposed CAT NMS Plan. *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, to Brent J. Fields, Secretary, Commission (dated July 18, 2016), *available at: https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf.* This letter advances many of the same arguments described below, as well as some additional arguments—namely, that: (1) Any funding mechanism for the CAT should be centralized; (2) allocating costs to Industry Members based on message traffic may disadvantage market-makers and broker-dealers who provide liquidity, as compared to those who take liquidity; (3) the Participants should implement a user fee in connection with the use of the CAT for regulatory purposes; (4) the CAT NMS Plan does not distinguish between costs of the CAT associated with collection and processing of data reported by broker-dealers as opposed to costs of the CAT designed to support SRO regulatory uses (noting that allocating costs of the CAT based on message traffic or market share would result in broker-dealers subsidizing the costs of surveillance systems and functions paid for by the Participants through regulatory fees that they already charge their members); (5) the Participants must substantiate the need for a CAT Fee in addition to current regulatory fees; and (6) funding for the CAT system should come through cost savings realized by the Participants from the retirement of old audit trail systems. *Id.* at 12–19. The Participants responded to these previously-expressed concerns in their response letter. The Participants state that (1) the CAT fee filings will implement a centralized approach to billing through the provision to each Industry Member of one invoice per quarter for CAT fees, regardless of the number of SROs to which the Industry Member belongs (*see* Response from Participants, *supra* note 23, at 9); (2) their choice of a tiered, fixed fee funding model would limit disincentives to providing liquidity as compared to strictly variable or metered funding models (*see id.* at 10); (3) the CAT NMS Plan authorizes a usage fee, but that it is premature to establish it (*see id.* at 8–9); (4) data ingestion and processing are primary drivers of the CAT costs, and therefore they believe that data processing is a reasonable basis for assessing CAT Fees (*see id.* at 8); (5) Rule 613 of Regulation NMS specifically contemplates broker-dealers contributing to the funding of the CAT and the Commission permitted the Participants to recover at least some of the CAT costs from their members (*see id.* at 3–4); and (6) the Participants have filed proposed rule changes to retire duplicative systems as required by the CAT NMS Plan and that once the Participants become more familiar with the CAT and have revised their surveillance methods, they will review their fees and determine whether to revise such fees (*see id.* at 9–10, 12).

[75] *See* SIFMA Letter; Cerny & O'Malley Letter; OTC Markets Letter; FIA Letter; MFA Letter; Shatto Letter, *supra* note 23. The Commission notes that the Shatto Letter agrees with the views expressed in SIFMA's letter and that the Smart Letter discusses concerns that are not pertinent to the proposed rule changes. Accordingly, those two letters are not further discussed in this section.

[76] *See* FIA Letter, *supra* note 23, at 2.

[77] *See id. See also* Cerny & O'Malley Letter, *supra* note 23, at 4 (suggesting that the CAT will not capture any new violative activity not currently disclosed under current surveillance practices).

[78] *See* FIA Letter, *supra* note 23, at 2.

[79] *See* MFA Letter, *supra* note 23, at 2.

[80] *See* Response from Participants, *supra* note 23, at 17.

[81] *See id.* at 18. As an example of such a filing, the Participants cite to Securities Exchange Act Release No. 80783 (May 26, 2017), 82 FR 25423 (June 1, 2017) (SR–FINRA–2017–013), wherein FINRA proposes to eliminate the Order Audit Trail System. *See* Response from Participants, *supra* note 23, at 18 n.103.

[82] *See* Response from Participants, *supra* note 23, at 18.

[83] *See* SIFMA Letter, *supra* note 23, at 2–4.

incurred before the approval of the CAT NMS Plan.[84]

In their response, the Participants state that Rule 613 of Regulation NMS (''Rule 613'') [85] contemplates broker-dealers contributing to the funding of CAT.[86] Because the CAT improves regulatory oversight of the securities markets, the Participants believe that it would be equitable to require broker-dealers and Participants to fund the CAT.[87] The Participants further believe that Rule 613 and the Approval Order [88] support their recovery of costs related to the creation, implementation and maintenance of the CAT NMS Plan, such as third-party support costs, the operational reserve and insurance costs, through the CAT Fee.[89]

Industry Member Input

Three commenters argue that the funding decisions would have benefited from greater involvement from Industry Members.[90] Two commenters assert that the Participants' development of the funding model should have involved collaboration with the broker-dealer community.[91] One commenter opines that if broker-dealers had been involved in the development of the funding model, such participation would have been helpful in understanding why market participants are subject to CAT fees and the rationale for the proposed fee structure.[92] Another commenter believes that the proposed fees lack substantive input from the Industry Members.[93] The third commenter recommends that the CAT NMS Plan Operating Committee include market participant representatives with respect to funding and data security, to enhance transparency and mitigate potential conflicts of interest.[94]

In response to the comment that the funding model should have been the result of greater industry collaboration, the Participants assert that market participants were given the opportunity to comment on the funding model through the CAT NMS Plan Notice [95] and that, in developing the funding model, the Participants considered the input of members of the industry through the ''Development Advisory Group'' that was formed to provide industry feedback on the development of the CAT NMS Plan.[96] Further, the Participants assert that the proposed fees provide the opportunity for public comment on the fees.[97]

Conflicts of Interest

Three commenters raise concerns about Participant conflicts of interest in setting the CAT fees.[98] One commenter argues that, through the proposals, the Participants are imposing unreasonable fees on their competitors, the Industry Members, who, as members of the Participants, have no recourse but to pay the fees or risk regulatory action.[99] This commenter states that 88% of the total costs of building and operating the CAT are allocated to broker-dealers and ATSs under the proposed fees, suggesting the Participants decided to allocate nearly all of the costs of CAT to their competitors.[100] Accordingly, the commenter recommends that an independent third party should have established the proposed CAT Fees to prevent the Participants from setting fees to their benefit.[101]

Another commenter argues that the Participants have a clear conflict of interest when setting their own cost allocation.[102] This commenter states that the not-for-profit structure of the Company is essential to the CAT NMS Plan, seeks assurance that the Company has filed for business league status and, if so, asks whether the application has been approved.[103] The third commenter believes the process to establish the CAT fees does not address the Participants' potential conflicts of interest related to their commercial interests.[104]

In their response, the Participants explain that it is unnecessary to require an independent third party to establish the CAT Fees, in part because the funding of the CAT is designed to protect against any conflicts of interest in the Participants' ability to set fees, through the operation of the CAT on a break-even basis (such that any fees collected would be used toward CAT costs and an appropriate reserve, and that surpluses would offset fees in future payment).[105] The Participants also refer to the application of the Company to be organized as a tax-exempt business league, which would require that no part of the Company's net earnings can inure to the benefit of the Participants and that the Company is not organized for profit.[106] Additionally, the Participants note that the obligation to create, develop and maintain the CAT is their own responsibility, so they must have the ability to establish reliable funding and not an independent third party.[107]

In response to the comment asking about the status of the Company's application to be organized as a tax-exempt business league, the Participants state that the Company filed its IRS application on May 5, 2017, and that the application is currently pending. The Participants explain that if the IRS does not approve the application, the Company will operate as set forth in the Plan, but may be required to pay taxes. They believe that it is premature to include a tax contingency plan in the proposals.[108]

Allocation of Fees

Several commenters raise concerns about the proposed allocation of CAT fees.[109] One commenter argues that the proposals are not an equitable allocation of reasonable fees under Section 6(b)(4) or Section 15A(b)(5) of the Exchange Act.[110] This commenter notes that the proposed fees allocate approximately 88% of the total costs of building and operating the CAT to broker-dealers and ATSs [111] and questions the ''comparability'' justification provided by the Participants for allocating 75% of the total CAT costs to Industry Members, stating that the proposed fees are not comparable at the highest tiers.[112] Similarly, another commenter opines that the 75%/25% allocation of the CAT costs is inequitable, explaining that the Participants will be able to realize cost savings from the retirement

[84] *See* FIA Letter, *supra* note 23, at 2–3; *see also* SIFMA Letter, *supra* note 23, at 3–4.

[85] 17 CFR 242.613.

[86] *See* Response from Participants, *supra* note 23, at 3.

[87] *See id.* at 4.

[88] *See supra* note 29.

[89] *See* Response from Participants, *supra* note 23, at 7–8.

[90] *See* SIFMA Letter; FIA Letter; MFA Letter, *supra* note 23.

[91] *See* SIFMA Letter, *supra* note 23, at 2–3; *see* FIA Letter, *supra* note 23, at 2 (stating ''we struggle to understand how excluding other market participants and taking input only from the Plan Participants is anything but prejudicial'').

[92] *See* FIA Letter, *supra* note 23, at 2.

[93] *See* SIFMA Letter, *supra* note 23, at 2–3.

[94] *See* MFA Letter, *supra* note 23, at 2.

[95] *See supra* note 28.

[96] *See* Response from Participants, *supra* note 23, at 2–3.

[97] *See id.* at 2.

[98] *See* SIFMA Letter, FIA Letter, MFA Letter, *supra* note 23.

[99] *See* SIFMA Letter, *supra* note 23, at 2–3.

[100] *See id.* at 2–3.

[101] *See id.*

[102] *See* FIA Letter, *supra* note 23, at 2.

[103] *See id.* at 3. This commenter raises concerns about the impact on the costs and allocations if the Company's application to become a business league is not approved by the Internal Revenue Service (''IRS''). *Id.*

[104] *See* MFA Letter, *supra* note 23, at 2.

[105] *See* Response from Participants, *supra* note 23, at 11.

[106] *See id.*

[107] *See id.* at 11–12.

[108] *See id.* at 11, 18.

[109] *See* SIFMA Letter; Cerny & O'Malley Letter, FIA Letter; MFA Letter, *supra* note 23.

[110] *See* SIFMA Letter, *supra* note 23, at 3.

[111] *See id.* at 3 n.4.

[112] *See id.* at 3.

of regulatory reporting processes.[113] A third commenter notes that it is unable to understand the justification for the 75% allocation to broker-dealers,[114] and the fourth commenter believes that the Participants are disproportionately imposing fees on Industry Members, which could put Industry Members at a competitive disadvantage.[115]

In response to comments regarding the allocation of CAT costs, the Participants first state that the 88% figure cited in the first commenter's letter is the cost broker-dealers will incur directly to comply with the reporting requirements of the CAT, not the CAT Fees.[116] The Participants also note that this is an aggregate number and reflects the fact that there are 75 times more Industry Members that would report to the CAT than Participants.[117]

In addition, the Participants explain that the Operating Committee believed that the 75%/25% division of total CAT costs between Industry Members and Execution Venues maintained the greatest level of comparability, considering affiliations among or between CAT Reporters.[118] The Participants state that although the Tier 1 and 2 fees for Industry Members would be higher than those for Execution Venues, the fees paid by Execution Venue complexes would be higher than those paid by Industry Member complexes.[119] The Participants also note that the cost allocation takes into account that there are approximately 24 times more Industry Members that would report to the CAT than Execution Venues.[120]

Tiering Methodology

Two commenters believe that the proposed tiering methodology is inequitable and unreasonable.[121] Both commenters raise concerns that the tiers will be applied inequitably because Industry Members will be assessed fees based on their message traffic (the biggest cost component of the CAT), while Participants will be assessed fees on their market share.[122] One of the commenters notes that, although the Participants proposed nine tiers for Industry Members, they have only proposed two tiers for Execution Venues,[123] ''claiming that additional tiers would have resulted in significantly higher fees for Tier 1 [E]xecution [V]enues and diminish comparability between [E]xecution [V]enues and Industry Members.'' [124] Both commenters believe the result will ''maximize costs for broker-dealers and minimize costs for Plan Participants.'' [125] One of the commenters also questions why it makes sense to charge a fixed fee for all market participants within a single tier, and whether the fixed-fee tiers set forth therein could create incentives for market participants to limit their quoting and trading activities as their trading volumes approach higher tiers.[126]

In response to the comments that the tiering methodology is inequitable and unreasonable because Participants will be assessed fees based on market share, rather than message traffic, the Participants explain that charging broker-dealers based on message traffic is the most equitable means to establish their fees because message traffic is a significant cost driver of CAT. Accordingly, the Participants believe that it is appropriate to use message traffic to assign fee tiers to broker-dealers.[127] The Participants state that charging Execution Venues based on message traffic, on the other hand, will result in large and small Execution Venues paying comparable fees as both types of Execution Venues produce similar amounts of message traffic.[128] The Participants believe such a result would be inequitable; therefore, they decided to base fees for Execution Venues and broker-dealers on different criteria.[129]

In response to a commenter's concern that the Participants only established two tiers for themselves, the Participants state that the CAT NMS Plan permits them to establish only two tiers and that two tiers were sufficient to distinguish between the Execution Venues.[130] The Participants state that adding more tiers will significantly increase fees for Tier 1 and Tier 2 Execution Venues with the result of fees for Tier 1 Execution Venues being much higher than fees for Tier 1 Industry Members.[131] In turn, the Participants believe that such a result will violate Section 11.2(c) of the CAT NMS Plan, which states that, in establishing the funding of the Company, the Operating Committee shall seek to establish a tiered fee structure in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).[132]

In response to the comment asking why it makes sense to charge a fixed fee for all market participants within a single tier and questioning the results of fixed-fee tiering, the Participants explain that the proposed approach ''helps ensure that fees are equitably allocated among similarly situated CAT Reporters, thereby lessening the impact of CAT fees on smaller firms,'' [133] and provides predictability of payment obligations.[134] The Participants also state that the fixed-fee approach provides elasticity to take into account any changes in message traffic levels through the use of predefined fixed percentages instead of fixed volume thresholds, and would not likely cause CAT Reporters to change their behavior (and impact liquidity) to avoid being placed in a higher tier.[135]

Options Market-Maker Fees

One commenter believes that the proposed fees will be unsustainable for small options market-makers.[136] The commenter explains that because the

[113] *See* Cerny & O'Malley Letter, *supra* note 23, at 2.

[114] *See* FIA Letter, *supra* note 23, at 3.

[115] *See* MFA Letter, *supra* note 23, at 2.

[116] *See* Response from Participants, *supra* note 23, at 5.

[117] *See id.*

[118] *See id.* at 15.

[119] *See id.* The Participants note that ''the proposed funding model estimates total fees for associated Participant complexes that are in several cases nearly two to three times larger than the single largest broker-dealer complex.'' *See id.* at 6.

[120] *See id.* at 15. The Commission notes that the Notice stated that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues. *See* Notice, *supra* note 16, at 23109.

[121] *See* SIFMA Letter; FIA Letter, *supra* note 23.

[122] *See* FIA Letter, *supra* note 23, at 3; SIFMA Letter, *supra* note 23, at 4 (stating ''the Plan Participants proposals inexplicably propose a tiering mechanism for themselves that is based on not their relative impact to the CAT system, but instead on their relative market share'').

[123] *See* SIFMA Letter, *supra* note 23, at 4.

[124] *See id.*

[125] *See* FIA Letter, *supra* note 23, at 3; *see also* SIFMA Letter, *supra* note 23, at 4.

[126] *See* FIA Letter, *supra* note 23, at 3.

[127] *See* Response from Participants, *supra* note 23, at 6.

[128] *See id.* at 6.

[129] *See id.* The Participants also explain that, while ATSs have varying levels of message traffic, they operate similarly to exchanges and therefore were categorized as Execution Venues. *See id.* at 6–7.

[130] *See id.* at 13. The Participants also state that, unlike for Industry Members, the data for Execution Venues ''did not suggest a break point(s) for the markets with less than 1% market share that would indicate an appropriate threshold for creating a new tier or tiers.'' *Id.*

[131] *See id.* at 14.

[132] *See id.;* Section 11.2(c) of the CAT NMS Plan.

[133] *See* Response from Participants, *supra* note 23, at 14.

[134] *See id.*

[135] *See id.*

[136] *See* Cerny & O'Malley Letter, *supra* note 23, at 1. The commenter notes that options market-makers have an obligation to quote ''hundreds of

Continued

nature of their business requires the generation of quotes, the proposed assessment of fees based on message traffic will place small options market-makers in the top Industry Member fee tiers, ''[a]lthough this category of broker-dealer is relatively small in terms of net worth . . . .'' [137] The commenter notes that the top three tier fees for Industry Members are comparable to the largest equity Execution Venues, which it states is neither equitable nor fair.[138] The commenter also believes that smaller broker-dealers, such as options market-makers and other electronic trading firms, will be in the top fee tiers, while larger ''full-service'' firms that produce fewer electronic messages would be in the lower fee tiers.[139] The commenter argues that this result is not equitable or fair to smaller market participants.[140]

Additionally, the commenter believes that charging Industry Members on the basis of message traffic will disproportionately impact options market-makers because, unlike for equities, message traffic would include options strikes and series.[141] Further, the commenter notes that options market-makers have continuous quoting obligations imposed by the exchanges, and consequently, expected increases in the options classes listed by the exchanges will increase CAT fees for options market-makers.[142] The commenter adds that the proposed fees may impact the ability of small options market-makers to provide liquidity and that such Industry Members may choose to leave the market-making business in order to avoid quoting requirements.[143]

In their response, the Participants explain that since message traffic is a major cost component for CAT, they believe it is an appropriate basis for assigning Industry Member fee tiers.[144] The Participants note that options market-makers will produce a large amount of message traffic to be processed by the CAT, so the Participants intend to charge them CAT fees.[145]

ATS Fees

One commenter objects to the proposed fees for ATSs, which are the same fees as Participants under the proposals, as unreasonable, because it believes the fees would result a significant burden on small ATSs and a barrier to entry for new ATSs that would not similarly apply to the Participants.[146]

Another commenter objects to the proposals' treatment of smaller Equity Execution Venues (such as low volume ATSs), opining that such treatment is unfair and anti-competitive.[147] The commenter also argues that smaller Execution Venues that were assigned to the second fee tier would be required to pay two-thirds of the fees allocated to ''the enormous NYSE or Nasdaq exchanges.'' [148] This commenter suggests adding at least one tier for small ATSs executing in the aggregate less than 1% of NMS stocks (based on trade volume), as well as for ATSs executing OTC Equity securities, and allocating approximately 1.5% of the total costs assigned to all Execution Venues to that tier.[149]

In response to the comment noting that charging ATSs the same CAT fees as Execution Venues would result in a significant burden on smaller ATSs and act as a barrier to entry, the Participants reiterate that two fee tiers for Execution Venues were appropriate because adding tiers would ''compromise the comparability of fees between Execution Venues and Industry Members with the most CAT-related activity. . . . [C]reating additional tiers could have unintended consequences on the funding model such as creating greater discrepancies between the tiers.'' [150] The Participants also explain that they decided to treat Execution Venues and ATSs in the same way because of the similarities of their business models and estimated burden on CAT.[151]

In response to the comment recommending the addition of a tier for small ATSs executing in the aggregate less than 1% of NMS stocks, the Participants explain that two fee tiers for Execution Venues were appropriate because adding tiers would ''compromise the comparability of fees between Execution Venues and Industry Members with the most CAT-related activity.'' [152] The Participants also state that they considered adding more than two tiers of Execution Venue fees, but that doing so would result greatly increase the fees imposed on Tier 1 Equity Execution Venues and ''diminish comparability between Execution Venues and Industry Members in a manner that would be difficult to justify under the funding model.'' [153]

OTC Equity Securities Execution Venues

One commenter objects to the proposals' treatment of Execution Venues for OTC Equity securities, opining that it is unfair and anti-competitive.[154] The commenter particularly objects to the assignment of OTC Link ATS to the first fee tier of Execution Venues with large Execution Venues for NMS Stocks.[155] The commenter states that OTC Link ATS was placed in the first CAT fee tier because fee tier assignments are inappropriately based on market share calculated from share volume.[156] The commenter states that the number of trades in OTC Equity Securities is relatively small,[157] as opposed to share volume ''due to the disproportionately large number of shares being traded on the OTC equity market as compared to the NMS market. . . .'' [158] The commenter explains that many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and that low-priced shares tend to trade in larger quantities.[159] Because the fee tiers are based on market share calculated from share volume, the commenter points out that OTC Link ATS has the greatest market share of all of the Execution Venues in both NMS Stocks and OTC Equity Securities at 29.90% and

thousands of options series'' and that this fact was acknowledged by the Commission, which exempted them from submitting their quotes to the Central Repository. *See id.* at 3; *see also* note 41 *supra.*

[137] *See* Cerny & O'Malley Letter, *supra* note 23, at 1.

[138] *See id.* at 3.

[139] *See id.* at 4.

[140] *See id.*

[141] *See id.* at 2.

[142] *See id.* at 3.

[143] *See id.* at 3, 4, 5.

[144] *See* Response from Participants, *supra* note 23, at 6, 17.

[145] *See id.* at 17 n. 96; *see also* note 41, *supra.*

[146] *See* SIFMA Letter, *supra* note 23, at 4. SIFMA states that Tier 2 Execution Venues will produce significantly more reports to CAT than Tier 2 ATSs, but points out that Tier 2 Execution Venues and Tier 2 ATSs will be subject to the same CAT Fees. *See id.*

[147] *See* OTC Markets Letter, *supra* note 23, at 1–2.

[148] *See id.* at 9.

[149] *See id.*

[150] *See* Response from Participants, *supra* note 23, at 16.

[151] *See id.* at 6–7.

[152] *See id.* at 16.

[153] *See id.*

[154] *See* OTC Markets Letter, *supra* note 23, at 1–2.

[155] *See id.* at 1, 3, 5.

[156] *See id.* at 6–8. The commenter states that ''[s]hare volume is an inappropriate method for determining market share, because the costs of operating the CAT are not correlated with the number of shares traded in any particular Execution Venue. Instead, CAT's costs are impacted by the number of orders and executions.'' *See id.* at 6. The commenter recommends using the number of trades in lieu of share volume, or dollar volume instead of share volume, for determining market share. *See id.* at 7–8.

[157] *See id.* at 4.

[158] *See id.* at 7.

[159] *See id.*

accordingly was assigned to the same fee tier as exchanges that the commenter claims have approximately 20 times greater trading revenues than OTC Link ATS.[160] The commenter believes that this unfairly burdens the market for OTC Equity Securities.[161] The commenter recommends placing Execution Venues for OTC Equity Securities in separate tiers from large Execution Venues for NMS Stocks and allocating costs to tiers based on number of trades to align tiers with CAT usage and costs.[162] Specifically, the commenter believes that there should be separate tiers for the Execution Venues for OTC Equity Securities with approximately 0.5% of the total costs assigned to all Execution Venues allocated to that tier, or at least one additional tier for small ATSs executing in the aggregate less than 1% of NMS stocks (based on trade volume) and OTC Equity securities with approximately 1.5% of the total costs assigned to all Execution Venues allocated to that tier.[163]

In their response, the Participants state that the CAT NMS Plan provides for the use of share volume to calculate market share for Execution Venues that execute transactions in NMS Stocks or OTC Equity Securities.[164] The Participants explain that two fee tiers for Execution Venues were appropriate because adding tiers would ''compromise the comparability of fees between Execution Venues and Industry Members with the most CAT-related activity'' [165] and that they considered adding more than two tiers of Execution Venue fees, but that doing so would result greatly increase the fees imposed on Tier 1 Equity Execution Venues and ''diminish comparability between Execution Venues and Industry Members in a manner that would be difficult to justify under the funding model.'' [166] The Participants believe that the CAT Fees do not impose an unnecessary or inappropriate burden on competition on OTC Equity Securities Execution Venues in light of the potential negative impact of increasing the number of fee tiers applicable to Execution Venues and the decision to use market share, as calculated by share volume, as the basis for Execution Venue CAT Fees.[167]

## IV. Suspension of the Proposed Rule Changes

Pursuant to Section 19(b)(3)(C) of the Act,[168] at any time within 60 days of the date of filing of an immediately effective proposed rule change in accordance with Section 19(b)(1) of the Act,[169] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization made thereby 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. The Commission believes a temporary suspension of the proposed rule changes is warranted here.[170]

In particular, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes to consider whether the proposed rule changes satisfy the standards under the Act and the rules thereunder requiring, among other things, that the rules of an exchange or a national securities association provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; promote just and equitable principles of trade; protect investors and the public interest; do not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[171]

The proposed rule changes are subject to Section 6 of the Act in the case of the national securities exchanges and Section 15A of the Act in the case of the national securities association, including: (1) Section 6(b)(4) [172] and Section 15A(b)(5),[173] which require the rules of an exchange or a national securities association to ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;'' [174] (2) Section 6(b)(5) and Section 15A(b)(6), which require the rules of an exchange or a national securities association to, among other things, ''promote just and equitable principles of trade . . . protect investors and the public interest; and [to be] not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;'' [175] and (3) Section 6(b)(8) and Section 15A(b)(9), which require the rules of an exchange or a national securities association to ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.'' [176]

In temporarily suspending the proposed rule changes, the Commission intends to consider whether, among other things, the following aspects of the proposed rule changes are consistent with the Act:

- The allocation of 75% of total costs recovered to Industry Members (other than Execution Venue ATSs) and 25% to Execution Venues, and the comparability of fees between the largest Industry Members and Tier 1 Execution Venues. The Participants stated that this 75%/25% division maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters.[177] The Participants explained that the cost allocation establishes fees for the largest Industry Members that are comparable to the largest Equity Execution Venues and Options Execution Venues.[178] In addition, they stated that the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes.[179] Furthermore, the Participants noted that

[160] *See id.* at 3.

[161] *See id.*

[162] *See id.* at 8.

[163] *See id.* at 9.

[164] *See* Response from Participants, *supra* note 23, at 16.

[165] *See id.*

[166] *See id.*

[167] *See id.*

[168] 15 U.S.C. 78s(b)(3)(C).

[169] 15 U.S.C. 78s(b)(1).

[170] For purposes of temporarily suspending the proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[171] *See* 15 U.S.C. 78f(b)(4), (5), and (8); 15 U.S.C. 78o–3(b)(5), (6), and (9).

[172] 15 U.S.C. 78f(b)(4).

[173] 15 U.S.C. 78o–3(b)(5).

[174] 15 U.S.C. 78f(b)(4).

[175] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78o–3(b)(6).

[176] 15 U.S.C. 78f(b)(8); 15 U.S.C. 78o–3(b)(9).

[177] *See, e.g.,* Notice, *supra* note 16, at 23109. The CAT NMS Plan funding principles state that, in establishing the funding of the Company, the Operating Committee shall seek to establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; and (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). *See* Section 11.2(c) of the CAT NMS Plan.

[178] *See, e.g.,* Notice, *supra* note 16, at 23109.

[179] *See id.* The Participants also represented that other possible allocations of CAT costs led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa and/or much

Continued

the allocation of total CAT costs recovered recognizes that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues.[180]

• The determination to rely on market share, as calculated by share volume in NMS Stocks and OTC Equity Securities, to place Equity Execution Venues for OTC Equity Securities and Execution Venues representing less than 1% NMS market share (primarily lower volume ATSs) in the same fee tier structure as Equity Execution Venues for NMS Stocks, as well as the determination to set two fee tiers and charge Equity Execution Venues in Tier 2 approximately two-thirds of the fees allocated to Equity Execution Venues in Tier 1. The CAT NMS Plan permits the Operating Committee to establish at least two and no more than five tiers of fixed fees for Equity Execution Venues.[181] The Participants explained that the Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers, because they believed that two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share.[182] The Participants added that the incorporation of additional Equity Execution Venue tiers will result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.[183] The Participants stated that the Operating Committee considered the distribution of Execution Venues, grouped together Execution Venues with similar levels of market share of share volume, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue fee tiers to distinguish between Execution Venues.[184]

• The inclusion of options market-maker quotes in message traffic for purposes of calculating the appropriate fee tier for Industry Members. The Participants stated that, under the proposals, each Industry Member will be placed into one of nine tiers of fixed fees, based on message traffic for a defined period.[185] Further, the Participants stated that options market-maker quotes will be included in the calculation of total message traffic for options market-makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.[186]

## V. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)[187] and 19(b)(2) of the Act[188] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[189] the Commission is hereby providing notice of the grounds for disapproval under consideration. The Commission believes that instituting proceedings will allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with: (1) Section 6(b)(4)[190] and Section 15A(b)(5),[191] which require the rules of an exchange or a national securities association to ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;''[192] (2) Section 6(b)(5) and Section 15A(b)(6), which require the rules of an exchange or a national securities association to, among other things, ''promote just and equitable principles of trade . . . protect investors and the public interest; and [to be] not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;''[193] (3) Section 6(b)(8) and Section 15A(b)(9), which require the rules of an exchange or a national securities association to ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter;''[194] and (4) the funding principles set forth in the CAT NMS Plan, which state that the Operating Committee shall seek, among other things, ''to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations''[195] and ''to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.''[196]

The Commission believes that the proposed rule changes raise questions as to whether the allocation of the total CAT costs recovered between and among Industry Members and Execution Venues is reasonable, equitable, and not unfairly discriminatory under Section 6 and Section 15A of the Act. In particular, the Commission wishes to consider further whether the allocation of 75% of total CAT costs recovered to Industry Members (other than Execution Venue ATSs) and 25% to Execution Venues is equitable and not unfairly discriminatory, and whether the CAT Fees are consistent with the funding principles set forth in the CAT NMS Plan, which state that, in establishing the funding of the Company, the Operating Committee shall seek, among other things, ''to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations''[197] and ''to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.''[198]

The Commission also believes the proposed rule changes raise questions as to whether the Participants have addressed the impact of the proposed tiers on Industry Members who are options market makers, who are required to continually quote a two-

higher fees for Industry Member complexes than for Execution Venue complexes or vice versa. *See id.*

[180] *See id.*

[181] *See* Section 11.3(a)(i) of the CAT NMS Plan.

[182] *See, e.g.,* Notice, *supra* note 16, at 23107.

[183] *See id.*

[184] *See id.*

[185] *See id.* at 23104.

[186] *See id.* at 23106 n.36.

[187] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[188] 15 U.S.C. 78s(b)(2).

[189] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[190] 15 U.S.C. 78f(b)(4).

[191] 15 U.S.C. 78o–3(b)(5).

[192] 15 U.S.C. 78f(b)(4).

[193] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78o–3(b)(6).

[194] 15 U.S.C. 78f(b)(8); 15 U.S.C. 78o–3(b)(9).

[195] Section 11.2(b) of the CAT NMS Plan.

[196] Section 11.2(e) of the CAT NMS Plan.

[197] Section 11.2(b) of the CAT NMS Plan.

[198] Section 11.2(e) of the CAT NMS Plan.

sided market in hundreds of thousands of options series. Specifically, the Commission wishes to consider further whether the proposed rule changes will result in an undue or inappropriate burden on competition under Section 6 and Section 15A or lead to a reduction in market quality contrary to the funding principles expressed in the CAT NMS Plan.[199]

Finally, the Commission believes the proposed rule changes raise questions as to whether the determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks will result in an undue or inappropriate burden on competition under Section 6 and Section 15A. Specifically, the Commission wishes to consider whether the Participants' decision to group Execution Venues for OTC Equity Securities and NMS Stocks in one tier structure, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks. The Commission is also considering whether the determination to place Execution Venues representing less than 1% of NMS market share in the same tier structure as other Equity Execution Venues will result in an undue or inappropriate burden on competition under Section 6 and Section 15A.

## VI. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by July 28, 2017. Rebuttal comments should be submitted by August 11, 2017. The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the proposal, which are set forth in the proposed rule changes,[200] in addition to any other comments they may wish to submit about the proposed rule changes. In particular, the Commission seeks comment on the following:

(1) With respect to the proposed allocation of total CAT costs:

(a) Commenters' views on the determination to allocate 75% of total CAT costs recovered to Industry Members (other than Execution Venue ATSs) and 25% to Execution Venues;

(b) Commenters' views on whether the proposed allocation of CAT Fees is consistent with the funding principles expressed in the CAT NMS Plan, which state that the Operating Committee shall seek, among other things, ''to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations'' [201] and ''to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality''; [202]

(c) Commenters' views on whether the Participants' approach to accounting for affiliations among Execution Venues in setting CAT Fees disadvantages non-affiliated Execution Venues or otherwise burdens competition in the market for trading services; and

(d) Commenters' views on potential alternative allocations of total CAT costs to Industry Members and Execution Venues, including allocations that do not so heavily account for comparability between and among Industry Member Complexes and Execution Venue Complexes.

(2) With respect to the proposed CAT Fees for Execution Venues:

(a) Commenters' views on the determination to place Equity Execution Venues for OTC Equity Securities and Equity Execution Venues representing less than 1% NMS market share (primarily lower volume ATSs) in the same fee tier structure as large Equity Execution Venues for NMS Stocks, including views as to whether this approach is consistent with the funding principles outlined in the CAT NMS Plan, views as to how this approach will affect competition in the market for trading services for low-priced NMS Stocks and/or securities not listed on national securities exchanges, and views regarding how these venues can be expected to contribute to CAT message traffic compared to other Equity Execution Venues;

(b) Commenters' views as to whether a separate tier structure should have been created for Equity Execution Venues for OTC Equity Securities, similar to the separate tier structure created for Options Execution Venues;

(c) Commenters' views, and supporting data, on whether charging Execution Venues based on message traffic will result in large and small Execution Venues paying comparable fees; and

(d) Commenters' views on the appropriate number of tiers for Execution Venues and the appropriate distribution of fees across such tiers.

(3) With respect to the proposed CAT Fees for both Industry Members and Execution Venues, commenters' views on whether the decreasing cost per additional unit (of message traffic in the case of Industry Members or of share volume in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.[203]

(4) With respect to the proposed CAT Fees for Industry Members:

(a) Commenters' views on the determination to include options market-maker quotes in message traffic for purposes of calculating the appropriate fee tier for options market-makers; and

(b) Commenters' views on the appropriate number of tiers for Industry Members and the appropriate distribution of fees across such tiers. The Commission also requests that commenters provide analysis to support their views, if possible.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposed rule changes are 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 any of: File Nos. SR–BatsBYX–2017–11; SR–BatsBZX–2017–38; SR–BatsEDGA–2017–13; SR–BatsEDGX–2017–22; SR–BOX–2017–16; SR–BX–2017–023; SR–C2–2017–017; SR–CBOE–2017–040; SR–CHX–2017–08; SR–FINRA–2017–011; SR–GEMX–2017–17; SR–IEX–2017–16; SR–ISE–2017–45; SR–MIAX–2017–18; SR–MRX–2017–04; SR–NASDAQ–2017–046; SR–NYSE–2017–22; SR–NYSEArca–2017–52; SR–NYSEMKT–2017–26; SR–PEARL–2017–20; or SR–PHLX–2017–37 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.

[199] *See id.* (requiring the Operating Committee ''to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality'').

[200] *See, e.g.,* Notice, *supra* note 16.

[201] Section 11.2(b) of the CAT NMS Plan.

[202] Section 11.2(e) of the CAT NMS Plan.

[203] The fee structure tends to charge more per unit of message traffic to smaller Industry Members, and more per unit of share volume to smaller Execution Venues.

All submissions should refer to any of: File Nos. SR–BatsBYX–2017–11; SR–BatsBZX–2017–38; SR–BatsEDGA–2017–13; SR–BatsEDGX–2017–22; SR–BOX–2017–16; SR–BX–2017–023; SR–C2–2017–017; SR–CBOE–2017–040; SR–CHX–2017–08; SR–FINRA–2017–011; SR–GEMX–2017–17; SR–IEX–2017–16; SR–ISE–2017–45; SR–MIAX–2017–18; SR–MRX–2017–04; SR–NASDAQ–2017–046; SR–NYSE–2017–22; SR–NYSEArca–2017–52; SR–NYSEMKT–2017–26; SR–PEARL–2017–20; or SR–PHLX–2017–37. The file numbers 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changess 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 Participants. 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 publicly available. All submissions should refer to any of: File Nos. SR–BatsBYX–2017–11; SR–BatsBZX–2017–38; SR–BatsEDGA–2017–13; SR–BatsEDGX–2017–22; SR–BOX–2017–16; SR–BX–2017–023; SR–C2–2017–017; SR–CBOE–2017–040; SR–CHX–2017–08; SR–FINRA–2017–011; SR–GEMX–2017–17; SR–IEX–2017–16; SR–ISE–2017–45; SR–MIAX–2017–18; SR–MRX–2017–04; SR–NASDAQ–2017–046; SR–NYSE–2017–22; SR–NYSEArca–2017–52; SR–NYSEMKT–2017–26; SR–PEARL–2017–20; or SR–PHLX–2017–37 and should be submitted on or before July 28, 2017. Rebuttal comments should be submitted by August 11, 2017.

## VII. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(3)(C) of the Act,[204] that File Nos. SR–BatsBYX–2017–11; SR–BatsBZX–2017–38; SR–BatsEDGA–2017–13; SR–BatsEDGX–2017–22; SR–BOX–2017–16; SR–BX–2017–023; SR–C2–2017–017; SR–CBOE–2017–040; SR–CHX–2017–08; SR–FINRA–2017–011; SR–GEMX–2017–17; SR–IEX–2017–16; SR–ISE–2017–45; SR–MIAX–2017–18; SR–MRX–2017–04; SR–NASDAQ–2017–046; SR–NYSE–2017–22; SR–NYSEArca–2017–52; SR–NYSEMKT–2017–26; SR–PEARL–2017–20; and SR–PHLX–2017–37 be and hereby are, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[205]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14245 Filed 7–6–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81063; File No. SR–MIAX–2017–31]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule Concerning the Options Regulatory Fee

June 30, 2017.

Pursuant to the provisions of 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 June 23, 2017, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to clarify the manner in which the Exchange assesses its Options Regulatory Fee (''ORF''), and also to align its ORF rule text to rule text recently adopted by the Exchange's affiliate, MIAX PEARL, LLC (''MIAX PEARL''), with respect to its ORF.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, the Exchange charges an ORF in the amount of $0.0045 per contract side. The proposed rule change does not change the amount of the ORF, but instead modifies the rule text to clarify how the ORF is assessed and collected. The proposed rule change also aligns the ORF rule text of the Exchange to rule text recently adopted by the Exchange's affiliate, MIAX PEARL, with respect to its ORF.[4]

The per-contract ORF will continue to be assessed by MIAX Options to each MIAX Options Member for all options transactions, including Mini Options, cleared or ultimately cleared by the Member which are cleared by the Options Clearing Corporation (''OCC'')

[204] 15 U.S.C. 78s(b)(3)(C).

[205] 17 CFR 200.30–3(a)(57) and (58).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 80035 (February 14, 2017), 82 FR 11272 (February 21, 2017) (SR–PEARL–2017–09); 80035 (March 30, 2017), 82 FR 18045 (April 10, 2017) (SR–PEARL–2017–15); 80875 (June 7, 2017), 82 FR 27096 (June 13, 2017) (SR–PEARL–2017–26). The replacement filings did not increase or decrease the amount of the ORF, but rather clarified the application of the ORF.

[4] *Id.*

in the ''customer'' range, regardless of the exchange on which the transaction occurs. The ORF will be collected by OCC on behalf of MIAX Options from either (1) a Member that was the ultimate clearing firm for the transaction or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm for the transaction. The Exchange uses reports from OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

To illustrate how the ORF is assessed and collected, the Exchange provides the following set of examples. If the transaction is executed on the Exchange and the ORF is assessed, if there is no change to the clearing account of the original transaction, then the ORF is collected from the Member that is the executing clearing firm for the transaction. (The Exchange notes that, for purposes of the Fee Schedule, when there is no change to the clearing account of the original transaction, the executing clearing firm is deemed to be the ultimate clearing firm.) If there is a change to the clearing account of the original transaction (*i.e.,* the executing clearing firm ''gives-up'' or ''CMTAs'' the transaction to another clearing firm), then the ORF is collected from the clearing firm that ultimately clears the transaction—the ultimate clearing firm. The ultimate clearing firm may be either a Member or non-Member of the Exchange. If the transaction is executed on an away exchange and the ORF is assessed, then the ORF is collected from the ultimate clearing firm for the transaction. Again, the ultimate clearing firm may be either a Member or non-Member of the Exchange. The Exchange notes, however, that when the transaction is executed on an away exchange, the Exchange does not assess the ORF when neither the executing clearing firm nor the ultimate clearing firm is a Member (even if a Member is ''given-up'' or ''CMTAed'' and then such Member subsequently ''gives-up'' or ''CMTAs'' the transaction to another non-Member via a CMTA reversal). Finally, the Exchange will not assess the ORF on outbound linkage trades, whether executed at the Exchange or an away exchange. ''Linkage trades'' are tagged in the Exchange's system, so the Exchange can readily tell them apart from other trades. A customer order routed to another exchange results in two customer trades, one from the originating exchange and one from the recipient exchange. Charging ORF on both trades could result in double-billing of ORF for a single customer order, thus the Exchange will not assess ORF on outbound linkage trades in a linkage scenario. This assessment practice is identical to the assessment practice currently utilized by the Exchange's affiliate, MIAX PEARL.

As a practical matter, when a transaction that is subject to the ORF is not executed on the Exchange, the Exchange lacks the information necessary to identify the order entering member for that transaction. There are countless order entering market participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. For these reasons, it is not possible for the Exchange to identify, and thus assess fees such as an ORF, on order entering participants on away markets on a given trading day. Clearing members, however, are distinguished from order entering participants because they remain identified to the Exchange on information the Exchange receives from OCC regardless of the identity of the order entering participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to collect the ORF from clearing members.

As discussed below, the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to a Member's activities supports applying the ORF to transactions cleared but not executed by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member enters a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority (''FINRA'') under a 17d–2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange will continue to monitor MIAX Options regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular at least 30 days prior to the effective date of the change.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by Members and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-Members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. While much of this activity relates to the execution of orders, the ORF is assessed on and collected from clearing firms. The Exchange, because it lacks access to information on the identity of the entering firm for executions that occur on away markets, believes it is appropriate to assess the ORF on its Members' clearing activity, based on information the Exchange receives from OCC, including for away market activity. Among other reasons, doing so better and more accurately captures activity that occurs away from the Exchange over which the Exchange has a degree of regulatory responsibility. In so doing, the Exchange believes that assessing ORF on Member clearing firms equitably distributes the collection of ORF in a fair and reasonable manner.

Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail (''COATS'') [5] system in order to surveil a Member's activities across markets.

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG''),[6] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.[7]

The Exchange believes that charging the ORF across markets will avoid having Members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a Member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member's activity,[8] including the activity of those members on MIAX PEARL.[9]

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRAs Trading Activity Fee [10] and the NYSE MKT, NYSE Arca, CBOE, Nasdaq PHLX, Nasdaq ISE, Nasdaq GEMX and BOX ORF. While the Exchange does not have all the same regulatory responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a Member's activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a Member's customer options transactions.

Additionally, the Exchange specifies in the Fee Schedule that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. In addition to submitting a proposed rule change to the Commission as required by the Act to increase or decrease the ORF, the Exchange will notify participants via a Regulatory Circular of any anticipated change in the amount of the fee at least 30 calendar days prior to the effective date of the change. The Exchange believes that by providing guidance on the timing of any changes to the ORF, the Exchange would make it easier for participants to ensure their systems are configured to properly account for the ORF.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [13] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed clarifications in the Fee Schedule to the ORF furthers the objectives of Section 6(b)(4) of the Act and are equitable and reasonable since they expressly describe the Exchange's existing practices regarding the manner in which the Exchange assesses its ORF.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Members in that it is charged to all Members on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those Members that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least a semi-annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the current amount of the fee is reasonable.

The Exchange believes that limiting changes to the ORF to twice a year on specific dates with advance notice is reasonable because it will give participants certainty on the timing of changes, if any, and better enable them to properly account for ORF charges among their customers. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will apply in the same manner to all Members that are subject to the ORF and provide them with additional advance notice of changes to that fee.

The Exchange believes that collecting the ORF from non-Members when such non-Members ultimately clear the transaction (that is, when the non-

[5] COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

[6] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[7] *See* Section 6(h)(3)(I) of the Act.

[8] Similar regulatory fees have been instituted by Nasdaq PHLX (*See* Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009–100)); Nasdaq ISE (*See* Securities Exchange Act Release No. 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR–ISE–2009–105)); and Nasdaq GEMX (*See* Securities Exchange Act Release No. 70200 (August 14, 2013) 78 FR 51242 (August 20, 2013) (SR–Topaz–2013–01)).

[9] *See supra* note 3.

[10] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

Member is the ''ultimate clearing firm'' for a transaction in which a Member was assessed the ORF) is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange notes that there is a material distinction between ''assessing'' the ORF and ''collecting'' the ORF. The ORF is only assessed to a Member with respect to a particular transaction in which it is either the executing clearing firm or ultimate clearing firm. The Exchange does not assess the ORF to non-Members. Once, however, the ORF is assessed to a Member for a particular transaction, the ORF may be collected from the Member or a non-Member, depending on how the transaction is cleared at OCC. If there was no change to the clearing account of the original transaction, the ORF would be collected from the Member. If there was a change to the clearing account of the original transaction and a non-Member becomes the ultimate clearing firm for that transaction, then the ORF will be collected from that non-Member. The Exchange believes that this collection practice is reasonable and appropriate, and was originally instituted for the benefit of clearing firms that desired to have the ORF be collected from the clearing firm that ultimately clears the transaction.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. Unilateral action by MIAX Options in establishing fees for services provided to its Members and others using its facilities will not have an impact on competition. In the highly competitive environment for equity options trading, MIAX Options does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. The Exchange's ORF, as described herein, is comparable to fees charged by other options exchanges for the same or similar services. The Exchange believes that limiting the changes to the ORF to twice a year on specific dates with advance notice is not intended to address a competitive issue but rather to provide Members with better notice of any change that the Exchange may make to the ORF.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[14] and Rule 19b–4(f)(2) [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2017–31 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–MIAX–2017–31. 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 No. SR–MIAX–2017–31, and should be submitted on or before July 28, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–14243 Filed 7–6–17; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15191 and #15192; COLORADO Disaster #CO–00077]**

### Administrative Declaration of a Disaster for the State of Colorado

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Colorado dated 06/30/2017.

*Incident:* Hailstorm.

*Incident Period:* 05/08/2017.

**DATES:** Effective 06/30/2017.

*Physical Loan Application Deadline Date:* 08/29/2017.

*Economic Injury (Eidl) Loan Application Deadline Date:* 03/30/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jefferson.

Contiguous Counties:

Colorado: Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Denver, Douglas, Gilpin, Park, Teller.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 3.875 |
| Homeowners without Credit Available Elsewhere | 1.938 |
| Businesses with Credit Available Elsewhere | 6.430 |
| Businesses without Credit Available Elsewhere | 3.215 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.500 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.500 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 3.215 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.500 |

The number assigned to this disaster for physical damage is 15191 B and for economic injury is 15192 0.

The State which received an EIDL Declaration # is Colorado.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 30, 2017.

**Linda E. McMahon,**

*Administrator.*

[FR Doc. 2017–14271 Filed 7–6–17; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15193 and #15194; Texas Disaster #TX–00483]**

### Administrative Declaration of a Disaster for the State of Texas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas dated 06/30/2017.

*Incident:* Severe Storms.

*Incident Period:* 05/28/2017 through 05/29/2017.

**DATES:** Effective 06/30/2017.

*Physical Loan Application Deadline Date:* 08/29/2017.

*Economic Injury (Eidl) Loan Application Deadline Date:* 03/30/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Gregg.

Contiguous Counties:

Texas: Harrison, Rusk, Smith, Upshur.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 3.875 |
| Homeowners without Credit Available Elsewhere | 1.938 |
| Businesses with Credit Available Elsewhere | 6.430 |
| Businesses without Credit Available Elsewhere | 3.215 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.500 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.500 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 3.215 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.500 |

The number assigned to this disaster for physical damage is 15193 B and for economic injury is 15194 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 30, 2017.

**Linda E. McMahon,**

*Administrator.*

[FR Doc. 2017–14270 Filed 7–6–17; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2014–45]**

### Petition for Exemption; Summary of Petition Received; Scott E. Ashton

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before July 27, 2017.

**ADDRESSES:** Send comments identified by docket number FAA–2017–0609 using any of the following methods:

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

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

**FOR FURTHER INFORMATION CONTACT:** John J. Barcas (202) 267–7023, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 20, 2017.

**Lirio Liu,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2014–45.

*Petitioner:* Scott E. Ashton.

*Section(s) of 14 CFR Affected:* § 135.168(b)(1).

*Description of Relief Sought:* Scott E. Ashton is requesting on behalf of Associated Aircraft Group, Inc. (AAG) for an exemption from § 135.168(b)(1) of Title 14, Code of Federal Regulations (14 CFR). The relief sought would allow the occupants of AAG's Sikorsky S–76 rotorcraft to not wear approved life preservers while the rotorcraft is beyond autorotational distance from a shoreline.

[FR Doc. 2017–14222 Filed 7–6–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[FHWA Docket No. FHWA–2016–0034]**

### Surface Transportation Project Delivery Program; Ohio Department of Transportation Audit Report

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the permanent Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance by each State participating in the Program. This notice makes available the final report of Ohio Department of Transportation's (ODOT) first audit under the program.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kreig Larson, Office of Project Development and Environmental Review, (202) 366–2056, *Kreig.Larson@dot.gov,* or Mr. Jomar Maldonado, Office of the Chief Counsel, (202) 366–1373, *Jomar.Maldonado@dot.gov,* Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., EST, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

### Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of the FHWA. The ODOT published its application for assumption under the National Environmental Policy Act (NEPA) Assignment Program on April 12, 2015, and made it available for public comment for 30 days. After considering public comments, ODOT submitted its application to FHWA on May 27, 2015. The application served as the basis for developing a Memorandum of Understanding (MOU) that identifies the responsibilities and obligations that ODOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on October 15, 2015, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and ODOT considered comments and proceeded to execute the MOU. Effective December 28, 2015, ODOT assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of Title 23, United States Code, requires the Secretary to conduct annual audits during each of the first 4 years of State participation. After the fourth year, the Secretary shall monitor the State's compliance with the written agreement. The results of each audit must be made available for public comment. The FHWA published a notice in the **Federal Register** on March 16, 2017, soliciting public comment for 30-days, pursuant to 23 U.S.C. 327(g). This notice is available at 82 FR 14096. The FHWA received comments on the draft report from the American Road & Transportation Builders Association (ARTBA). The ARTBA's comments were supportive of the Surface Transportation Project Delivery Program and did not relate specifically to Audit #1. The team has considered these comments in finalizing this audit report. This notice makes available the final report of ODOT's first audit under the program.

**Authority:** 23 U.S.C 327; 23 CFR 773; 49 CFR 1.85.

Issued on: June 29, 2017.

**Walter C. Waidelich, Jr.,**

*Acting Deputy Administrator, Federal Highway Administration.*

### Surface Transportation Project Delivery Program

### FHWA Audit of the Ohio Department of Transportation

### December 28, 2015 through August 5, 2016

### TABLE OF CONTENTS

**Background** ..... 7
**Scope and Methodology** ..... 8
Overall Audit Opinion ..... 9
**Observations and Successful Practices** ..... 11
Program Management ..... 11
*Observation 1: ODOT has established a strategy, direction, and framework for the integration and implementation of NEPA Assignment throughout ODOT, including OES, Districts, agencies, LPAs, and consultants* ..... 11
*Observation 2: ODOT has proactively revised its policies, manuals, guidance, and processes to ensure that they are current and compliant with NEPA Assignment requirements* ..... 12
*Observation 3: EnviroNet, ODOT's robust and comprehensive NEPA process system, has facilitated implementation of NEPA Assignment* ..... 12

*Observation 4: ODOT does not include EAs, EISs, or their re-evaluations in the EnviroNet system in the same way as Categorical Exclusions (CE)* ..... 13
Documentation and Records Management ..... 13
*Observation 5: FHWA identified project-level compliance issues with 12 projects in 7 environmental resource areas, including: Public Involvement, Environmental Justice, Environmental Commitments, Wetlands, Floodplains, and Section 4(f)* ..... 13
*Observation 6: The team identified several instances where the information included in the online environmental file did not follow ODOT standards* ..... 14
Quality Assurance/Quality Control (QA/QC) ..... 14
*Observation 7: There are variations in awareness, understanding, and implementation of QA/QC process and procedures that may result in the potential for inconsistencies in project documentation* ..... 15
Legal Sufficiency Review ..... 16
*Observation 8: ODOT has developed guidance for legal sufficiency. To date, guidance on legal sufficiency is untested* ..... 16
*Successful Practice 1: ODOT has successfully integrated a dedicated legal counsel as part of the environmental team* ..... 17
Performance Measures ..... 17
*Observation 9: Development of a program for collecting and maintaining Performance Measures as defined in Part 10.2 of the MOU is ongoing* ..... 17
Training Program ..... 18
*Observation 10: ODOT has a robust environmental training program* ..... 18
*Successful Practice 2: ODOT uses pre-qualified consultants for environmental work. Part of the qualifying criteria is completion of the same training as is required of ODOT environmental staff* ..... 18
*Successful Practice 3: ODOT includes required and on-going training of all environmental staff and consultants* ..... 18
*Observation 11: Opportunities exist for expanding training in EJ* ..... 19
**Preparation and Comment on the Draft Report** ..... 19
Finalization of Report ..... 19

**Executive Summary**

As part of responsibilities specified in 23 U.S.C. 327, as amended by the Fixing America's Surface Transportation (FAST) Act (P.L. 114–94), this is the first audit of the Ohio Department of Transportation (ODOT)'s assumption of National Environmental Policy Act (NEPA) responsibilities, conducted by a team of Federal Highway Administration (FHWA) staff (the team). On December 28, 2015, ODOT assumed Federal Highway Administration's (FHWA) NEPA responsibilities and liabilities for the Federal-aid highway program in Ohio, as specified in a Memorandum of Understanding (MOU) signed on December 11, 2015. This audit examined ODOT's performance under the MOU regarding responsibilities and obligations assigned therein.

The FHWA review team, formed in February 2016, met regularly to prepare and conduct elements of the review. Prior to the on-site visit, the team performed reviews of ODOT's project NEPA documentation in EnviroNet (ODOT's official environmental document filing system), the ODOT pre-audit information request (PAIR) response, and ODOT's self-assessment report. In addition, the team reviewed ODOT guidance documents, including the NEPA Quality Control/Quality Assurance Guidance, and the ODOT NEPA Assignment Training Plan. The team developed interview questions for ODOT Central Office, ODOT Districts, and outside agencies for the on-site portion of this review, which took place from August 1–5, 2016.

The ODOT is still in a transition phase and is developing and implementing procedures and processes for Federal decisionmaking responsibility under the NEPA Assignment Program. Overall, the team found evidence that ODOT made reasonable progress in implementing the NEPA Assignment Program and is committed to establishing a successful program. This report provides the team's assessment of ODOT's implementation of the NEPA Assignment Program, embodied in 11 observations and 3 successful practices.

It is important to differentiate between program-level compliance and project-level compliance under the NEPA Assignment Program. Project-level compliance refers to whether ODOT followed Federal environmental laws and regulations for a specific environmental action on a project. Project-level compliance trends may indicate program-level compliance. Program-level compliance refers to whether ODOT followed requirements (1) described in programs, processes, and procedures including Federal environmental laws and regulations for NEPA; (2) embodied in 23 U.S.C. 327 (as amended by the FAST Act); and (3) stipulated in the MOU between FHWA and ODOT for the Assignment Program. The team did not make any program-level non-compliance observations during this first review; however, the team did note project-level non-compliance observations, which this report discusses in further detail.

The team finds ODOT to be in substantial compliance with the provisions of the MOU. The ODOT has carried out the responsibilities that it has assumed, keeping with the intent of the MOU and its application for NEPA assumption responsibilities. We encourage ODOT to consider the observations in this report to continue to build upon the early successes of its program.

**Background**

The Surface Transportation Project Delivery Program (NEPA Assignment Program) allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance with environmental laws for Federal-aid highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The NEPA assignment first began as a pilot program established by Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). Section 1313 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), as codified in 23 U.S.C. 327 and amended by the FAST Act, made this program permanent.

Pursuant to Ohio Revised Code Section 5531.30, signed into law by Governor Kasich on April 1, 2015, the State of Ohio expressly consented to exclusive Federal court jurisdiction with respect to the compliance, discharge, and enforcement of any responsibility with respect to duties under NEPA and other Federal environmental laws assumed by ODOT. Ohio has therefore waived its sovereign immunity under 11th Amendment of the U.S. Constitution and consents to Federal Court jurisdiction for actions brought by its citizens for projects it has

approved under the NEPA Assignment Program.

The ODOT published its application for assumption under the NEPA Assignment Program on April 12, 2015, and made it available for public comment for 30 days. After considering public comments, ODOT submitted its application to FHWA on May 27, 2015. The application served as the basis for developing the MOU that identifies the responsibilities and obligations that ODOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on October 15, 2015, at 80 FR 62153, with a 30-day comment period to solicit the views of the public and Federal agencies. After the comment period closed, FHWA and ODOT considered comments and executed the MOU.

Effective December 28, 2015, ODOT assumed FHWA's project approval responsibilities under NEPA and NEPA-related Federal environmental laws.

Federal responsibilities not assigned to ODOT that remain with FHWA include:

(1) any highway projects authorized under 23 U.S.C. 202 (Tribal Transportation Program);

(2) any highway projects authorized under 23 U.S.C. 203 and 204 (Federal Lands Transportation Program), unless such projects will be designed and constructed by ODOT;

(3) any project that crosses State boundaries, and any project that crosses or is adjacent to international boundaries (A project is considered ''adjacent to international boundaries'' if it requires the issuance of a new or the modification of an existing Presidential Permit by the U.S. Department of State.);

(4) project-level conformity determinations under the Federal Clean Air Act; and

(5) conducting government-to-government consultation with federally recognized Indian tribes.

The FHWA will conduct a series of four annual compliance audits of the ODOT NEPA Assignment Program to satisfy provisions of 23 U.S.C. 327(g) and Part 11 of the MOU. Audits, as stated in MOU Sections 11.1.1 and 11.1.5, are the primary mechanism to oversee ODOT's compliance with the MOU, ensure compliance with applicable Federal laws and policies, evaluate ODOT's progress toward achieving the performance measures identified in MOU Section 10.2, and collect information needed for the Secretary's annual report to Congress.

This audit report will be available to ODOT and the public for review and comment. The FHWA will consider the status of observations from an audit as part of the scope of future audits and will include a summary discussion describing the progress made since the prior audit in all subsequent audit reports.

To ensure a level of diversity and guard against unintended bias, the team is comprised of NEPA subject matter experts from the FHWA Ohio Division Office, as well as FHWA offices in Washington, DC; Atlanta, GA; Austin, TX; Tallahassee, FL; and Baltimore, MD. In addition to the NEPA experts, two individuals from FHWA's Program Management Improvement Team in Lakewood, CO, provided technical assistance in conducting reviews. All of these experts received training specific to evaluation of implementation of the NEPA Assignment Program. The diverse composition of the team and the process of developing the audit report for publication in the **Federal Register** ensure that the team conducted the audit in an unbiased and official manner.

**Scope and Methodology**

The team conducted a careful examination of the ODOT NEPA Assignment Program through review of three primary sources of information: project files, ODOT's responses to the pre-audit information request, and interviews with ODOT Central Office and District environmental staff, as well as resource agency staff. All reviews focused on objectives related to the six NEPA Assignment Program elements contained in the MOU: program management; documentation and records management; quality assurance/quality control; legal sufficiency; performance measurement; and training.

The purpose of the project file review was to evaluate the NEPA process and procedures utilized by ODOT, but not project-specific NEPA decisions. Fourteen members of the team reviewed a statistically valid sample of project files in ODOT's online environmental file system, EnviroNet. The universe of projects included any highway project with an environmental approval date between December 28, 2015, and May 31, 2016. Using a 90 percent confidence level and 10 percent margin of error, the team reviewed 82 out of 535 total projects. The projects reviewed represented all NEPA classes of action available, all 12 ODOT Districts, and the Ohio Rail Development Commission.

The team composed the 40-question PAIR based on requirements in the MOU that were incorporated into the objectives for the audit. The ODOT provided responses to the questions and the requests for documentation, such as its organizational structure. The team reviewed ODOT's responses to gain an understanding of how ODOT is currently meeting the requirements of the MOU. The team also compared the procedures described in the response to ODOT's written procedures. Finally, the team developed specific questions for the interviews to gather more information or to seek clarification based on ODOT's PAIR response.

The team conducted approximately 40 on-site interviews with staff at three ODOT Districts (District 4 [Akron], District 5 [Jacksontown], and District 9 [Chillicothe]); ODOT's Division of Planning, Office of Environmental Services (OES); the Ohio Rail Development Commission; and the Columbus, Ohio field offices of both the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers. In each office, interviewees included staff, middle management, and executive management. The selected interviewees represented a diverse range of expertise and experience. The interviews at the ODOT Districts also included a discussion with the District Environmental Coordinators and environmental staff on project specific issues identified in the team's project file review. In addition, the team met with ODOT OES to discuss the audit's identified project file issues following the on-site review week.

The team verified information on the ODOT NEPA Assignment Program through review of ODOT policies, guidance, manuals, and reports. This included the NEPA Quality Control/Quality Assurance Guidance, ODOT NEPA Assignment Training Plan, and ODOT NEPA Assignment Self-Assessment report. The team identified gaps between the information in the documents, project file review, and interviews. The team documented the results of its reviews and interviews and consolidated the results into related topics or themes. From these topics or themes, the team developed the review observations and successful practices. The FHWA defines an observation as a statement that explains the condition, criteria, cause, and effect. The team considers observations as sufficiently important to urge ODOT to consider improvements or enhancement to the area of project management in its NEPA Assignment Program.

The FHWA defines successful practices as processes, procedures, practices, and technologies that the team wants to recognize, and that may benefit others. Successful practices should be replicable and scalable for other agencies.

*Overall Audit Opinion*

The ODOT has carried out the responsibilities it has assumed pursuant to both the MOU and the Application. As such, the team finds ODOT to be in substantial compliance with the provisions of the MOU. Overall, the team found evidence that ODOT made reasonable progress in implementing the NEPA Assignment Program and is committed to establishing a successful program. The team identified eleven (11) observations, including both successful practices and opportunities for ODOT to improve its implementation of the NEPA Assignment Program.

*Project-level* compliance refers to whether ODOT properly documented and followed Federal environmental laws and regulations for a specific environmental action on a project. Project-level compliance trends may indicate program-level compliance. The project-level compliance issues noted by the review team did not indicate a trend of program non-compliance in this review.

*Program-level* compliance refers to whether ODOT followed requirements described in programs, processes and procedures including Federal environmental laws and regulations for NEPA; requirements imposed by 23 U.S.C. 327; and compliance with the MOU between FHWA and ODOT for the NEPA Assignment Program. The team did not make any program-level, non-compliance observations during this first review; however, the team noted project-level non-compliance observations, which this report discusses in further detail below.

The team recognizes that ODOT is still implementing the NEPA Assignment Program and is in the early stages of fully adapting and incorporating the requisite programs, policies, and procedures into its overall project development program. The ODOT's efforts are appropriately focused on establishing and refining policies, procedures, and guidance; training staff, including those within and outside of ODOT; clarifying role and responsibility changes due to NEPA Assignment; and monitoring compliance with its assigned responsibilities.

The ODOT's EnviroNet system provides a framework for ODOT's NEPA Assignment Program by serving as a records retention repository and as a project management tool for decisionmaking in the NEPA process. It also provides documentation of agency coordination and public involvement in that decision. The system has built-in controls, allowing ODOT to apply a measure of quality control and to enable the preparer to monitor project status, track when key decisions are required, and to record when they are completed.

The team has noted 11 observations. The team urges ODOT to consider improvements through one or more of the following: revising policies, procedures, and guidance, as needed; educating staff on the content and parameters of the policies, procedures, and guidance through targeted training; continued self-assessment; and continued information dissemination both inside and outside of ODOT and with the public. We encourage ODOT to consider the observations in this report to continue to build upon the early successes of its program.

**Observations and Successful Practices**

*Program Management*

*Observation 1: ODOT has established a strategy, direction, and framework for the integration and implementation of NEPA Assignment throughout ODOT, including OES, Districts, agencies, LPAs, and consultants.*

The ODOT has communicated—through procedure development and/or refinement, its day-to-day correspondence, and rollout presentations within and outside of ODOT—that it has a strategy for incorporating NEPA Assignment into the overall project development process. The team found in ODOT's responses to the PAIR and through interviews that ODOT has utilized various means to disseminate this information to ODOT Central Office, Districts, coordinating agencies, Local Public Agencies (LPA), consultants, and the public. The Administrator of OES has stated that NEPA Assignment should be invisible on a day-to-day basis, as the NEPA process itself has not changed. The ODOT is simply completing the process under the MOU, which reflects ODOT's authority to make NEPA decisions, as agreed to by FHWA and ODOT.

Staff at all levels affirmed that OES management continuously stresses the responsibility and liability inherent in NEPA Assignment. Management stressed that all levels of staff should be fully aware of their responsibilities in all day-to-day activities. In addition, ODOT is also enhancing its working relationship with LPAs to ensure consistency in the preparation and review of NEPA documents, whether prepared by ODOT or the LPA. In general, ODOT takes pride in its assumed responsibilities and has worked to ensure that its staff is comfortable in this new role through policy and procedure review, and through various training opportunities. Interview responses also reflected that prior to NEPA Assignment, OES provided in-house training for ODOT consultants and staff at all levels.

Additional training opportunities noted in the PAIR and interviews include the newly established, bi-weekly NEPA Chats and quarterly District Environmental Coordinator (DEC) meetings. Interviewees indicated that they appreciate these opportunities and view them as an effective forum for learning and practice. These activities provide avenues for OES to dispense information, examples, and tips; answer questions; and explain new concepts to enhance staff understanding of new processes and procedures. Attendance at the NEPA Chats is mandatory, and when staff cannot attend a session, ODOT provides a summary of the information covered shortly after the NEPA Chat is completed.

The ODOT added three positions to address specific NEPA Assignment responsibilities: the NEPA Assignment Coordinator, environmentally focused legal counsel, and another staff person who dedicates half her time to NEPA Assignment. The OES and District staff stated that there are sufficient personnel to deliver a successful NEPA Assignment program. District staff also indicated that OES subject matter staff and management are available to assist the Districts when needed.

*Observation 2: ODOT has proactively revised its policies, manuals, guidance, and processes to ensure that they are current and compliant with NEPA Assignment requirements.*

In demonstrating preparedness for NEPA Assignment, ODOT has been pro-active in revising its policies, manuals, guidance, and processes to ensure the documents are current, per NEPA Assignment requirements. An interview with OES executive management confirmed that these revisions account for approximately 80 documents to date, plus updates to ODOT's training curriculum.

To prepare for NEPA Assignment, ODOT has reached out to each of the external resource agencies to assure them that long-established relationships will not change as a result of NEPA Assignment. The ODOT's PAIR response and self-assessment, as well as in resource agency interviews, evince this effort. In addition, ODOT developed escalation procedures with some resource agencies. Resource agencies have praised both the technical competency of ODOT staff and the effective documentation on ODOT sponsored projects. During the resource

agency interviews, interviewees shared some opportunities for improvement; these included better response time from ODOT on non-compliance notices and project-specific information requests.

*Observation 3: EnviroNet, ODOT's robust and comprehensive NEPA process system, has facilitated implementation of NEPA Assignment.*

EnviroNet (ODOT's official online environmental file system) provides a framework for ODOT's NEPA Assignment Program, serving as a records retention repository and a project management tool for the NEPA process. It also provides documentation of agency coordination and public involvement for a particular decision. The system has built-in controls, allowing ODOT to apply a measure of quality control and to enable the preparer to monitor project status, track when key decisions are required, and record when they are completed.

EnviroNet provides a robust and comprehensive system to capture the NEPA process. The system has been a useful tool in facilitating the implementation of NEPA Assignment. Two key features are its ease of use and the fact that it acts as a process guide to enhance the completion of NEPA documentation, assuring that the requisite documents are included in the electronic project file. The team supports ODOT's plans to upgrade the EnviroNet System and resource agency access.

EnviroNet serves as ODOT's official online environmental file system, and ODOT procedures require that staff save all project-related documents therein. The ODOT NEPA File Management and Documentation Guidance,[1] dated March 23, 2016, states, ''*ODOT must retain project files and general administrative files related to NEPA responsibilities. Every related decision-making document must be included the EnviroNet Project File.*'' However, the team learned through its interviews with ODOT staff that ODOT deletes internal comments related to draft documents from the project file once the document is final. In addition, interviewees indicated that alternate and duplicate files are stored outside of the EnviroNet system. The team also discovered instances where the Environmental Assessment (EA) and the Environmental Impact Statement (EIS) documentation were located outside of EnviroNet.

[1] Available at: *https://www.dot.state.oh.us/NEPA-Assignment/Documents/ODOT_NEPA_File_Management.pdf.*

These practices may represent a risk to ODOT, since they could eliminate documentation and evidence that support the ''hard look'' at projects required by NEPA. More specifically, the deleted comments and the use of alternate files could leave gaps in the decisionmaking process that may be subject to litigation. The deletion of internal document review comments and use of alternate files could also hinder the transparency of the process and potentially call into question reasonable assurances of compliance with NEPA and other recordkeeping requirements. In addition, ODOT's process of internal comment deletion does not allow for documenting trends in matters of compliance and non-compliance.

*Observation 4: ODOT does not include EAs, EISs, or their re-evaluations in the EnviroNet system in the same way as Categorical Exclusions (CE).*

During interviews, ODOT personnel acknowledged EnviroNet contains date fields to track EAs, EISs, and their re-evaluations, but the system does not have fields to enter all information for these classes of NEPA actions. Interviewees stated that staff typically upload a PDF of the EA, EIS, or associated re-evaluation to the Project File Tab in EnviroNet, in addition to entering data into the date fields.

The team reviewed two EIS re-evaluations that had incomplete documentation in EnviroNet, per ODOT's NEPA File Management and Documentation Guidance. Upon further inquiry, the team determined that ODOT had stored the complete documentation outside of EnviroNet because the original EIS documentation predated EnviroNet. Due to inconsistencies between ODOT's guidance and actual practices, the team encourages ODOT to update its NEPA File Management and Documentation Guidance to clarify how EAs, EISs, and their re-evaluations should be documented and filed to ensure that staff includes all necessary information in the official environmental project file.

*Documentation and Records Management*

*Observation 5: FHWA identified project-level compliance issues with 12 projects in 7 environmental resource areas, including: Public Involvement, Environmental Justice, Environmental Commitments, Wetlands, Floodplains, and Section 4(f).*

The team discovered project compliance issues in the areas of Public Involvement (PI), Environmental Justice (EJ), Environmental Commitments, Wetlands, Floodplains, and Section 4(f). The ODOT's self-assessment identified these same issues, with the exception of Section 4(f). The review noted several instances that indicated the improvements ODOT should make in these areas. The project-level compliance issues noted did not rise to the level of a finding of program-level non-compliance. None of the reviewed projects were in danger of losing Federal funding. For example, 24 percent of the sampled projects demonstrated a need for improved public involvement, and 6 percent of sampled projects had insufficient EJ analyses to satisfy all Federal requirements.

Areas Noted in Need of Improvement by Agency

| Areas in Need of Improvement | FHWA | ODOT |
|---|---|---|
| PI | ✓ | ✓ |
| EJ | ✓ | ✓ |
| Floodplains | ✓ | ✓ |
| Environmental Commitments | ✓ | ✓ |
| Wetlands Findings per E.O. 11990 | ✓ | ✓ |
| Section 4(f) | ✓ | ..... |
| Project File Management * | ✓ | ✓ |

* ODOT's Self-Assessment identified Project File Management (Documentation) is another area in need of improvement, in terms of documentation input errors within the EnviroNet project file.

The team met with ODOT, and ODOT agreed with the identified project compliance issues. The ODOT continues to improve its processes and procedures to ensure complete documentation and project-level compliance. The ODOT has indicated that it will take actions to correct the individual project compliance issues, such as adding missing documentation to the Project File tab in EnviroNet. The team encourages ODOT to look for any needed improvements to EnviroNet, policies, procedures, and manuals to ensure complete documentation and compliance on future projects.

*Observation 6: The team identified several instances where the information included in the online environmental file did not follow ODOT standards.*

The FHWA identified instances where ODOT was inconsistent with its documentation procedures, per the *ODOT NEPA File Management and Documentation Guidance,* and various other ODOT NEPA resource-area guidance documents. The ODOT's Self-Assessment also identified project file management as another area in need of improvement (see table above), in terms of documentation input errors within the EnviroNet environmental files.

Overall, ODOT has sound documentation tools, procedures and guidance. However, opportunities exist for ODOT to refine the EnviroNet system, accompanying procedures and guidance, and improve documentation standards. The team encourages ODOT to refine its controls and training to ensure proper documentation. This may include upgrades to EnviroNet and policies, procedure, and manuals.

*Quality Assurance/Quality Control (QA/QC)*

*Observation 7: There are variations in awareness, understanding, and implementation of QA/QC process and procedures that may result in the potential for inconsistencies in project documentation.*

Interviews with ODOT District and OES staff revealed differences in the level of knowledge and understanding of the QC process. Some interviewees knew that they played a role and could describe exactly how they complete the process. Other interviewees were less familiar with their role in the QC process or indicated that they had little to no role. In addition, some interviewees who hold the same title, but work in different offices (both Districts and OES), reported different roles or engagement in the QC process. At the same time, nearly all interviewees reported that they review projects or other NEPA documents and provide or respond to comments, indicating a misunderstanding of the term QC.

In addition, interviews with ODOT District and OES staff revealed many of ODOT's resource area manuals and guidance documents contain information that can assist in the QC review process. Interviewees reported that the contents of the manuals or guidance help them determine if the document under review is in compliance, that all necessary analysis was complete, and that all documentation is included. The FHWA did hear variation in the frequency and extent to which interviewees utilized the manuals and guidance as a tool in their QC reviews. For example, many interviewees stated that they use the manuals and guidance on a frequent basis, but others stated that they do not need to reference the documents during their review.

Interviews also revealed variation in the implementation of the QC process, particularly related to comments generated through the QC process. Many interviewees indicated that they were able to generate comments and address them through EnviroNet; however, some indicated that they provided comments via email or other methodologies. In addition, some staff discussed capturing the comments generated during the QC process in EnviroNet through different means and saving them outside of the EnviroNet system.

The FHWA reviewed ODOT's response to the PAIR, the ODOT NEPA Quality Control/Quality Assurance Guidance, and the ODOT NEPA Assignment Self-Assessment report to obtain clarification about some of the variation in the District and OES responses. The PAIR response contains the most detailed information regarding the manuals and guidance documents, ODOT staff's role in the QC process, and how the staff should capture comments generated in the QC process. The QC/QA Guidance contains general information about staff roles in some of the QC process, but does not discuss the use of manuals or comment documentation. Lastly, the self-assessment report contains some information about use of manuals, but does not discuss staff roles or comment documentation.

Review of the ODOT NEPA Quality Control/Quality Assurance Guidance and ODOT's response to the PAIR revealed that ODOT's QA is primarily comprised of its self-assessment process. Interviews with ODOT Districts and OES staff revealed differences in awareness and understanding of the self-assessment process. Many of the interviewees indicated they did not know about ODOT's first self-assessment.

The ODOT Self-Assessment report included statements about areas of improvement. However, FHWA was uncertain how ODOT planned to implement changes. Through review of ODOT's response to the PAIR and interviews, FHWA determined that OES provided the Districts with Interoffice Communication memos that contained self-assessment results and suggestions for improvement for the specific District. In addition, OES emailed the self-assessment report to the District Environmental Coordinator's email list (includes staff and DECs) and shared the results with ODOT's executive management.

The OES stated in interviews that it is going to develop strategies to address programmatic issues from the self-assessment after it gets the results of this report. In addition, OES indicated that they will follow-up with Districts to determine if the Districts have implemented project specific corrections.

The QC/QA guidance does not contain detailed information on some elements of the QA/QC process. After the interviews, FHWA has a better understanding that many employees use the ODOT manuals and guidance as reference. However, staff still seems to be unclear about their role in the QC process, and there is variation in implementation of the process. This could create inconsistencies in the implementation of the QA/QC process around the State, particularly regarding project documentation. The FHWA previously encouraged ODOT to expand its QC/QA guidance document to include information that is more detailed. The ODOT indicated in its PAIR response that the final updated version of the QC/QA Guidance document would be available in the coming months.

*Legal Sufficiency Review*

*Observation 8: ODOT has developed guidance for legal sufficiency. To date, guidance on legal sufficiency is untested.*

In December 2015, ODOT developed legal sufficiency guidance entitled ''ODOT NEPA Assignment Legal Sufficiency Review Guidance.'' The guidance sets forth the review procedure and criteria. In addition, the guidance provides information to environmental staff on what criteria an attorney will focus on during the legal sufficiency review. Per that guidance, ODOT is required to conduct legal sufficiency reviews of combined Final Environmental Impact statements/Record of Decision documents, individual Section 4(f) evaluations, and **Federal Register** notices on the Statute of Limitations of claims pursuant to 23 U.S.C. 139.

To date, ODOT has not applied this guidance because it did not have any documents that required legal sufficiency review. However, if program staff were to receive such documents, they would forward a request for review to a dedicated attorney assigned to OES by the Chief Legal Counsel. The attorney has 15 business days to complete the legal sufficiency review. Upon receipt of the request, the attorney will notify the program staff, giving the staff an estimated date of completion, and provide any comments and a Legal Sufficiency finding to the OES Administrator, Deputy Director of Planning, and the Chief Legal Counsel.

*Successful Practice 1: ODOT has successfully integrated a dedicated legal counsel as part of the environmental team.*

Per the team's suggestion, ODOT has assigned one attorney from the Office of Chief Legal Counsel to provide legal services on environmental issues to ODOT. This dedicated attorney serves

as a resource on all environmental matters and provides legal assistance to OES. The dedicated staff attorney has 8 months experience in his position and has taken all required environmental training courses. However, he does rely on outside resources for complex environmental matters. At this time, ODOT does not have a specific, identified attorney to take on the work if this dedicated attorney leaves the agency. The ODOT should consider training a backup attorney to assist when the dedicated legal counsel is not available.

Since ODOT has not completed any documents that require a legal sufficiency review, the team's audit on this topic is necessarily limited. At this time, our report on legal sufficiency reviews is a description of ODOT's status as described in its response to the PAIR and during the interviews with ODOT staff. The team will examine ODOT's legal sufficiency reviews by project file inspection and through interviews in future audits.

*Performance Measures*

*Observation 9: Development of a program for collecting and maintaining Performance Measures as defined in Part 10.2 of the MOU is ongoing.*

The FHWA established the Performance Measures included in MOU Section 10.2 to provide an overall indication of ODOT's execution of its responsibilities assigned by the MOU. During the interviews, the team learned that staff at both the Districts and OES was not informed about the performance measures contained in the MOU, nor of any actions taken by OES to address the performance measures.

Leadership at OES indicated in interviews that they were aware that the MOU requires ODOT to develop criteria for information and the means to collect such information. However, at the time of the interviews, ODOT was developing a plan to address the performance measures but it had not yet implemented that plan. Based on the responses contained in the PAIR and the Department's Self-Assessment report, OES indicated that it intends to report on performance measures in the future. The ODOT's timeline to fully develop the MOU performance measures is unclear. The FHWA is encouraged that ODOT executive management may add these performance measures, once developed, to the ODOT Critical Success Factors, which are ODOT's departmental performance measures.

The ODOT told the team that it has begun developing performance measures, and that further development will continue. The team did learn that some OES staff had considered potential means to collect and measure baseline data. For example, ODOT staff considered measuring the times for completing the NEPA/environmental process for pre- and post-assignment projects to compare differences of timeliness and efficiencies. The ODOT is currently establishing the baseline. The team will assess meaningful measures in Audit #2.

*Training Program*

*Observation 10: ODOT has a robust environmental training program.*

The ODOT documented its training plan in December 2015, as required by Section 12.2 of the MOU. The training plan includes both traditional, instructor-based training courses and quarterly District Environmental Coordinator meetings, where ODOT's OES can share new information and guidance with district staff and staff can participate in discussions on the environmental program. The training plan states that ''consultants must successfully complete training classes to be pre-qualified in specific environmental areas and have specific experience required in each area.'' During interviews with ODOT management, the team learned that pre-qualification requirements also include the experience of the consultant in providing specific services, as well as the required ODOT training.

*Successful Practice 2: ODOT uses pre-qualified consultants for environmental work. Part of the qualifying criteria is completion of the same training as is required of ODOT environmental staff.*

The training plan states that all ODOT environmental staff (both central office and district offices) are required to take the pre-qualification training courses. Staff is encouraged to take all training offered, beyond the required training. The team found through interviews with ODOT staff that there was a major effort to ensure that all staff was up to date on required training. The ODOT management indicated that there was a one-time increase in the training budget to ensure that staff had the necessary training to carry out their NEPA responsibilities. District management staff also indicated their support by describing how they prioritize and provide time for staff to attend training. All staff interviewed indicated that they had always received the support of management to receive necessary training.

The training plan includes a system to track training needs within and outside ODOT. Interviewees indicated that the NEPA Assignment Coordinator or the OES Training Coordinator notifies individuals when they need training. This includes information on when the training needs to be completed and when it is available. The system also tracks training histories for local agencies and consultants.

*Successful Practice 3: ODOT includes required and on-going training of all environmental staff and consultants.*

The ODOT's training plan relies solely on ODOT-developed courses, with no outside training offered in the plan. Discussions with ODOT management noted that they were not opposed to such training, as long as it was relevant to Ohio's needs and program implementation. In support of this statement, ODOT management pointed to an upcoming National Highway Institute (NHI) training for ODOT staff on public speaking. Additionally, ODOT has sent staff to other Federal agency training, such as the conservation training offered by the U.S. Fish and Wildlife Service.

Currently ODOT's training plan for required environmental courses consists of only instructor-led training and in-person meetings. Such courses allow for interaction among staff, consultants, and local agencies. However, ODOT management noted that relying solely on instructor-based training is costly and time consuming. The ODOT told the team that it is currently assessing each of its training courses to determine if any would be more suitable as web-based or electronic learning courses. The FHWA encourages ODOT to continue this evaluation and incorporate web based courses as appropriate.

*Observation 11: Opportunities exist for expanding training in EJ.*

In its Self-Assessment report, ODOT identified EJ as an area needing improvement. The team asked several ODOT staff about EJ training opportunities. While most staff indicated that they had received such training within the past 5 years, they also noted that such training was part of a larger course, such as the ''*NEPA—Managing the Environmental and Project Development Process*'' course, the ''*Categorical Exclusion*'' course, or the ''*Public Involvement*'' course. There is not a stand-alone training course on EJ in ODOT's Training Plan. In one District, a project manager (non-environmental staff) stated they had never received training on EJ. When the team asked management in one district about expectations for EJ, management indicated that they had none.

The ODOT management identified EJ as an area needing improvement in their Self-Assessment report. In the interim, FHWA encourages ODOT to consider EJ

training for its staff and consultants, offered by the NHI and/or the FHWA Resource Center.

**Preparation and Comment on the Draft Report**

In consultation with ODOT, FHWA prepared a draft audit report and provided this draft to ODOT for a 14-day review and comment period. After considering ODOT's comments, FHWA published a notice in the **Federal Register** on March 16, 2017, soliciting public comment for 30-days, pursuant to 23 U.S.C. 327(g). This notice is available at 82 FR 14096.

**Finalization of Report**

The FHWA received comments on the draft report from the American Road & Transportation Builders Association (ARTBA). The ARTBA's comments were supportive of the Surface Transportation Project Delivery Program and did not relate specifically to Audit #1. The team has considered these comments in finalizing this audit report.

Since the completion of this report, staff from ODOT and FHWA have established quarterly partnering sessions where observations and other issues relating to NEPA assignment are being discussed, clarified, and resolved.

[FR Doc. 2017–14233 Filed 7–6–17; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Gravina Access Project in Alaska

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of limitation of claims for judicial review of actions by FHWA and other Federal agencies.

**SUMMARY:** This notice announces final actions taken by FWHA. The actions relate to the proposed Gravina Access Project in the Ketchikan Gateway Borough in the State of Alaska. Those actions grant approvals for the project.

**DATES:** By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of FHWA actions on the Gravina Access Project will be barred unless the claim is filed on or before December 4, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Karen Pinell, Assistant Division Administrator, Alaska Division Office, FHWA, P.O. Box 21648, Juneau, Alaska 99802, Telephone (907) 586–7158. The FHWA Alaska Division Office's normal business hours are 8:00 a.m. to 5:00 p.m. (Alaska Standard Time), Monday through Friday, except Federal holidays. You may also contact Kirk Miller, P.E., Project Manager, DOT&PF Southcoast Region, 6860 Glacier Highway, Juneau, Alaska 99801–7999, Telephone (907) 465–1215. The DOT&PF Southcoast Region's normal business hours are 8:00 a.m. to 4:30 p.m. (Alaska Standard Time), Monday through Friday, except State and Federal holidays.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that FHWA has taken final agency action subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the Gravina Access Project in the State of Alaska. The Gravina Access Project proposes to improve access between Revillagigedo Island and Gravina Island in the Ketchikan Gateway Borough, Alaska.

The project includes the following components:

1. Reconstruction of existing airport ferry berths to meet current design standards;
2. Upgrades and improvements to pedestrian facilities at the airport ferry terminals;
3. A new heavy freight mooring facility and new ferry layup dock on Gravina Island;
4. Shuttle vans to carry pedestrians and their luggage to/from the airport;
5. New toll facilities;
6. Replacement of the bridge over Airport Creek; and
7. Reconstruction of Seley Road from Lewis Reef Road to approximately the end of the Airport Reserve.

The actions by FHWA and the laws under which such actions were taken are described in the Gravina Access Project Final Environmental Impact Statement (SEIS) and Record of Decision (ROD) issued on July 7, 2017, and in other documents in the project records. The Final SEIS, ROD, and other project records are available by contacting FHWA at the address provided above. The Final SEIS and ROD can be viewed and downloaded from the project Web site at: at: *http://dot.alaska.gov/sereg/projects/gravina_access/* or by contacting FHWA at the address provided above.

This notice applies to all FHWA decisions as of the issuance date of this notice and all laws under which such actions were taken. Laws generally applicable to such actions include but are not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Wildlife:* Fish and Wildlife Coordination Act [16 U.S.C. 661–667d; Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevens Fisheries Conservation and Management Act of 1976, as amended [16 U.S.C. 1801–1891d, Bald and Golden Eagle Protection Act [16 U.S.C. 668–668d), Endangered Species Act (16 U.S.C 1536).
3. *Waters of the U.S.:* Section 404 of the Clean Water Act [33 U.S.C. 1344].
4. *Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306108]; Archaeological and Historic Preservation Act [54 U.S.C. 312501–312508]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-470mm].
5. *Executive Orders:* Executive Order 12898, Environmental Justice; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; Executive Order 13112, Invasive Species; Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency; Executive Order 13186 Migratory Birds; Executive Order 11593, Protection and Enhancement of the Cultural Environment; and Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

**Authority:** 23 U.S.C. 139(*l*)(1).

Issued On: June 27, 2017.

**Sandra A. Garcia-Aline,**

*Alaska Division Administrator, Juneau, Alaska.*

[FR Doc. 2017–14234 Filed 7–6–17; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0175]**

### Hours of Service of Drivers: Application for Exemption; Rail Delivery Services (RDS)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from Rail Delivery Services (RDS) for an exemption to spare its drivers who stay within a 100 air-mile radius of their

normal work-reporting location but may occasionally return to that location more than 12 hours later, from the requirement to complete a record of duty status (RODS) for that day. RDS states that its fleet of commercial motor vehicles (CMVs) are all equipped with a Global Positioning System (GPS) vehicle tracking device, which they believe justifies their request for this exemption and provides an equivalent or greater level of safety than would be obtained by complying with the regulations. FMCSA requests public comment on the RDS application for exemption.

**DATES:** Comments must be received on or before August 7, 2017.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2017–0715 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2017–0175), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2017–0175'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions for up to 5 years from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

RDS is, according to its Web site at *www.raildelivery.com,* a ''California-based intermodal trucking company moving freight, trailers and containers between railroads, ports, consignees and shippers, reliably and efficiently throughout California and adjacent states.'' RDS believes that all of its drivers—approximately 100–120—would operate under the terms of the requested exemption from the 12-hour limitation in the log-book exception in 49 CFR 395.1(e)(1). On a weekly basis, RDS expects that about 15% of its drivers will return to their work reporting location more than 12 hours after coming on duty, due to waiting times at rail yards and shipper locations, while still operating within the required 100 air-mile radius. The drivers who occasionally exceed the 12-hour limitation nearly always return to the terminal within 14 hours.

On average, less than .02% of RDS drivers exceed the daily 14-hour limit. A detailed report of hours worked is generated each morning, which is reviewed daily by dispatchers and the Safety Department. If a CMV is operated beyond the 14th hour, the departments work diligently to determine whether the truck was over the hours-of-service (HOS) limits, or utilized for personal conveyance. In virtually all of these cases, owner-operators are using their vehicles for personal conveyance, which is allowed by the HOS rules.

According to RDS, at the present time, virtually all of its drivers operate within a 70- to 80-mile radius of their home terminal. They are home every day and for the most part meet the exemption requirements of the 100 air-mile radius

driver. Some of these drivers record their hours worked on an ''exempt'' log. Other drivers complete a grid log, even though they meet the 100 air-mile radius exemption. Both types of paper logs are time consuming for the drivers and the Safety Department. For this reason, RDS has embarked on the use of a vehicle recording device, which has helped increase the company's safety performance. It accurately records all of the drivers' activities including on-duty time, driving time, and total hours for the day. RDS is using the Geotab 7 system, a global positioning system (GPS) that tracks the location of the vehicle.

This electronic system allows for accuracy and ''real-time'' follow up. RDS believes that with this system it is improving the safety of the motoring public by ensuring that the drivers do not falsify their log books or operate when they are tired. Additionally, proactive measures have been implemented by RDS to improve highway safety. RDS states that the use of a daily log book or an ''exempt'' log does not enable the carrier to monitor and respond to these events in ''real-time.'' Violations are discovered 12 to 24 hours later. However, with the electronic tracking system all departments see the events in ''real-time'' and can respond immediately. This GPS system has allowed the Safety Department to reduce the time spent auditing log books after the fact.

RDS believes that the use of the Geotab 7 system, along with their increased focus on driver training and education, goes beyond compliance with the Federal regulations. The system has allowed them to provide ''real time'' oversight of the company's safety program. Every time a driver exceeds posted speed limits an email alert is sent to the Safety Department, dispatchers, and terminal management. Drivers are notified via email and phone when safe to do so, advising them of the need to slow down. Drivers also receive email notifications, letters, and phone calls for instances of harsh cornering and hard braking. When notified of these critical events, RDS's drivers receive critical information on why and how to improve vehicle handling to avoid rollovers, and how to better judge following distance and other issues to avoid hard braking.

RDS states that its procedures are designed to ensure that it leases only the highest caliber of drivers with a proven record of safe driving. RDS is committed to ensuring that its drivers operate in a way that protects the motoring public.

## IV. Method To Ensure an Equivalent or Greater Level of Safety

If this exemption is granted, RDS proposes to implement the following conditions on its use of this exemption:

- Allow FMCSA and the State enforcement partners access to its data as both a monitoring and training tool. This would be provided to the Agency and State partners by granting them access at any time through RDS's web portal.
- RDS will maintain a Satisfactory safety rating.
- RDS drivers will carry a copy of the exemption with them when operating the CMV.
- RDS will conduct a minimum of four safety meetings per year.
- RDS will continue their ongoing immediate notification and training for any drivers who exceed a speed limit.
- RDS will continue its ongoing immediate notification and training for any drivers who exceed the HOS limits.

A copy of the RDS application for exemption is available for review in the docket for this notice.

Issued on: June 27, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–14273 Filed 7–6–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2016–0354]**

### Agency Information Collection Activities; Extension of a Currently-Approved Information Collection: Accident Recordkeeping Requirements

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. FMCSA is requesting approval to extend a currently-approved ICR entitled ''Accident Recordkeeping Requirements.'' This ICR relates to Agency requirements that motor carriers maintain a record of accidents involving their commercial motor vehicles (CMVs). On March 22, 2017, FMCSA published a **Federal Register** notice announcing an increase in the Agency's estimate of the total information-collection (IC) burden of this requirement and asked for public comment. No comments were received. The regulatory burden has not changed, but the population of motor carriers has increased, both organically and because the Agency now includes the population of intrastate motor carriers in this ICR.

**DATES:** Please send your comments by August 7, 2017. OMB must receive your comments by this date to act quickly on the ICR.

**ADDRESSES:** All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0354. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the OMB Desk Officer, DOT/FMCSA, and sent via electronic mail to *oira_submission@omb.eop.gov,* faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert F. Schultz, FMCSA Driver and Carrier Operations Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Accident Recordkeeping Requirements.

*OMB Control Number:* 2126–0009.

*Type of Request:* Extension of a currently approved information collection.

*Respondents:* Motor Carriers.

*Estimated Number of Respondents:* 886,122 motor carriers.

*Estimated Number of Responses:* 120,522.

*Estimated Time per Response:* 18 minutes.

*Expiration Date:* July 31, 2017.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 36,157 hours [120,522 accidents × 18 minutes per response/60 minutes in an hour].

*Definition:* ''Accident'' means an occurrence involving a CMV operating on a public road that results in: (1) A fatality, (2) bodily injury to a person who, because of the injury, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles being towed from the scene due to disabling damage (49

CFR 390.5 and as well as in section 390.5T while in effect).

**Background**

Title 49 of the Code of Federal Regulations, section 390.15(b), requires motor carriers to make certain specified records and information pertaining to CMV accidents available to an authorized representative or special agent of the FMCSA upon request or as part of an inquiry. Motor carriers are required to maintain an ''accident register'' consisting of information concerning all ''accidents'' involving their CMVs (49 CFR 390.15(b)(see ''Definition: Accident,'' above). The following information must be recorded for each accident: Date, location, driver name, number of injuries, number of fatalities, and whether certain dangerous hazardous materials were released. In addition, the motor carrier must maintain copies of all accident reports required by insurers or governmental entities. Motor carriers must maintain this information for three years after the date of the accident. Section 390.15 does not require motor carriers to submit any information or records to FMCSA or any other party.

This ICR supports the DOT strategic goal of safety. By requiring motor carriers to gather and record information concerning CMV accidents, FMCSA is strengthening its ability to assess the safety performance of motor carriers. This information is a valuable resource in Agency initiatives to prevent, and reduce the severity of, CMV crashes.

The Agency increases its burden estimate from 26,700 to 36,157 hours. The regulatory requirement has not changed for accident recordkeeping. The increase is due to two revised estimates: (1) The population of motor carriers subject to the regulation, from 520,000 to 886,122, and (2) the number of reportable accidents, from 89,000 to 120,522. The Agency has amended the population of motor carriers to include the accident recordkeeping burden of intrastate motor carriers. In past estimates, the Agency had taken the position that the accident recordkeeping of intrastate carriers occurred as a result of State law. However, the OMB has directed FMCSA to include such intrastate activities in its IC estimates, so we do so in this burden estimate statement for the first time. The Agency estimates that 886,122 motor carriers are subject to accident register requirements (508,367 interstate and 377,755 intrastate motor carriers). The Agency further estimates that the number of accidents that must be reported by intrastate or interstate motor carriers is 120,522.

The Agency received no comments to the 60-day **Federal Register** notice published on March 22, 2017 (82 FR 14793).

**Public Comments Invited**

FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions, (2) the accuracy of the estimated burden, (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information, and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: June 28, 2017.

**G. Kelly Regal,**

*Associate Administrator for Office of Research and Information Technology.*

[FR Doc. 2017–14272 Filed 7–6–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2007–28043]**

### Hours of Service (HOS) of Drivers; American Pyrotechnics Assn. (APA) Application for Exemption From the 14-Hour Rule; Request To Add New Member to Current APA Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to grant an exemption to the American Pyrotechnics Association's (APA) new member-company, Pyro Shows of Alabama, Inc., from the prohibition on driving commercial motor vehicles (CMVs) after the 14th hour after the driver comes on duty. During the 2016 Independence Day period 51 APA members held such an exemption, effective during the period June 28 through July 8 each year through 2020. APA advised FMCSA of the discontinuance of the exemption for one carrier; with the addition of the new member the total remains at 51. The exemption granted to Pyro Shows of Alabama, Inc. will terminate at the same time as the other 50 exempted carriers. FMCSA has determined that the terms and conditions of the exemption ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

**DATES:** These exemptions from 49 CFR 395.3(a)(2) are effective from June 28 through July 8, at 11:59 p.m. local time, each year through 2020.

**ADDRESSES:**

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2007–28043'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR

381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## APA Application for Exemption

The HOS rule in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying CMV from driving a commercial motor vehicle (CMV) after the 14th hour after coming on duty following 10 consecutive hours off duty. The APA, a trade association representing the domestic fireworks industry, was granted exemptions for 51 member companies through the annual Independence Day periods ending on July 8, 2020 [81 FR 43701, July 5, 2016]. APA has requested an additional exemption for Pyro Shows of Alabama Inc. (USDOT 2859710) and the discontinuance of an exemption for Pyrotechnico, LLC, also known as Wild Dragon Fireworks (USDOT 548303), maintaining the total at 51. Like the other carriers currently operating under the exemption, Pyro Shows of Alabama's exemption will also expire on July 8, 2020. Although this is less than the 5-year exemption period authorized by 49 U.S.C. 31315(b)(2), as amended by section 5206(a)(3) of the FAST Act, FMCSA believes that the interests of the APA members and the Agency would best be served by harmonizing, as far as possible, the expiration dates of all such fireworks-related exemptions. Like the other 50 member-companies, this additional member company would be subject to all of the terms and conditions of the exemption.

The initial APA application for relief from the 14-hour rule was submitted in 2004; a copy is in the docket. That application fully described the nature of the pyrotechnic operations of the CMV drivers during a typical Independence Day period.

As stated in the 2004 request, the CMV drivers employed by APA member companies are trained pyro-technicians who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA states that it is seeking an additional exemption for Pyro Shows of Alabama, Inc. because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member companies. To meet the demand for fireworks without the exemptions, APA states that its member companies would be required to hire a second driver for most trips. The APA advises that the result would be a substantial increase in the cost of the fireworks shows—beyond the means of many of its members' customers—and that many Americans would be denied this important component of the celebration of Independence Day. The 50 APA member companies currently exempt (as well as Pyro Shows of Alabama, seeking an exemption for the first time) are listed in an appendix to this notice. Pyro Shows of Alabama is identified with an asterisk. A copy of the request for the exemption is included in the docket referenced at the beginning of this notice.

## Method To Ensure an Equivalent or Greater Level of Safety

The APA believes that the exemption would not adversely affect the safety of the fireworks transportation provided by this motor carrier. According to APA, its member-companies have operated under this exemption for 10 previous Independence Day periods without a reported motor carrier safety incident. Moreover, it asserts, without the extra time provided by the exemption, safety would decline because APA drivers would be unable to return to their home base after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. As a condition of holding the exemption, each motor carrier will be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any its CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the prior APA exemptions.

In its exemption request, APA asserts that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before July 4, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

## Public Comments

On May 15, 2017, FMCSA published notice of this application and requested public comments (82 FR 22375). One comment was submitted by an individual who objected to the exemption, stating ''Thank you. I am dead set against this especially with one of the last lines of this article, stating it would mean having to hire 2 drivers. Point being? Hire a second driver and quit it.''

## FMCSA Response

FMCSA has determined that granting an exemption to Pyro Shows of Alabama, Inc. will achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would ensure. Prior to publishing the **Federal Register** notice announcing the receipt of APA's application to add Pyro Shows of Alabama to the current list of carriers operating under the exemption, FMCSA ensured that the motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any ''imminent hazard'' or other out-of-service (OOS) orders. The Agency conducted a comprehensive investigation of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

With regard to safety statistics, none of the carriers, including Pyro Shows of Alabama, was under an imminent

hazard or OOS order, had any alerts in the Safety Management System (SMS), or was under investigation by the Pipeline and Hazardous Materials Safety Administration. All had ''satisfactory'' safety ratings based on compliance reviews, and all had valid Hazardous Materials Safety Permits.

Terms and Conditions of the Exemption

Period of the Exemption

The exemption from 49 CFR 395.3(a)(2) is effective from June 28 through July 8, at 11:59 p.m. local time, each year through 2020 for the 51 carriers identified in this notice.

Terms and Conditions of the Exemption

The exemptions from 49 CFR 395.3(a)(2) will be limited to drivers employed by the 50 motor carriers already covered by the exemption, and drivers employed by Pyro Shows of Alabama, which is identified by an asterisk in the appendix table of this notice. Section 395.3(a)(2) prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption is contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty, as extended by any off-duty or sleeper-berth time in accordance with this exception. The exemption is further contingent on each driver having a full 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period. The carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification

Exempt motor carriers are required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under this exemption. The notification must be by email to *MCPSD@DOT.GOV* and include the following information:

a. Name of the Exemption: ''APA''

b. Date of the accident,

c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,

d. Driver's name and driver's license State, number, and class,

e. Co-Driver's name and driver's license State, number, and class,

f. Vehicle company number and power unit license plate State and number,

g. Number of individuals suffering physical injury,

h. Number of fatalities,

i. The police-reported cause of the accident,

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to *MCPSD@DOT.GOV* as soon as available.

Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record.

However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Exempt motor carriers and drivers would be subject to FMCSA monitoring while operating under this exemption.

Issued on: June 29, 2017.

**Randi F. Hutchinson,**

*Chief Counsel.*

**Appendix to Notice of Application for Approval of Motor Carriers To Utilize American Pyrotechnics Association's (APA) Exemption From the 14-Hour Rule During 2017 Independence Day Celebrations**

| | Motor carrier | Street address | City, state, zip code | DOT No. |
|---|---|---|---|---|
| 1 | American Fireworks Company | 7041 Darrow Road | Hudson, OH 44236 | 103972 |
| 2 | American Fireworks Display, LLC | P.O. Box 980 | Oxford, NY 13830 | 2115608 |
| 3 | AM Pyrotechnics, LLC | 2429 East 535th Rd | Buffalo, MO 65622 | 1034961 |
| 4 | Arthur Rozzi Pyrotechnics | 6607 Red Hawk Ct | Maineville, OH 45039 | 2008107 |
| 5 | Atlas PyroVision Entertainment Group, Inc | 136 Old Sharon Rd | Jaffrey, NH 03452 | 789777 |
| 6 | Central States Fireworks, Inc | 18034 Kincaid Street | Athens, IL 62613 | 1022659 |
| 7 | East Coast Pyrotechnics, Inc | 4652 Catawba River Rd | Catawba, SC 29704 | 545033 |
| 8 | Entertainment Fireworks, Inc | 13313 Reeder Road SW | Tenino, WA 98589 | 680942 |
| 9 | Falcon Fireworks | 3411 Courthouse Road | Guyton, GA 31312 | 1037954 |
| 10 | Fireworks & Stage FX America | 12650 Hwy 67S. Suite B | Lakeside, CA 92040 | 908304 |
| 11 | Fireworks by Grucci, Inc | 20 Pinehurst Drive | Bellport, NY 11713 | 324490 |
| 12 | Flashing Thunder Fireworks dba Legal Aluminum King Mtg. | 700 E Van Buren Street | Mitchell, IA 50461 | 420413 |
| 13 | J&J Computing dba Fireworks Extravaganza | 174 Route 17 North | Rochelle Park, NJ 07662 | 2064141 |
| 14 | Gateway Fireworks Displays | P.O. Box 39327 | St Louis, MO 63139 | 1325301 |
| 15 | Great Lakes Fireworks | 24805 Marine | Eastpointe, MI 48021 | 1011216 |
| 16 | Hamburg Fireworks Display, Inc | 2240 Horns Mill Road SE | Lancaster, OH | 395079 |
| 17 | Hawaii Explosives & Pyrotechnics, Inc | 17–7850 N. Kulani Road | Mountain View, HI 96771 | 1375918 |
| 18 | Hollywood Pyrotechnics, Inc | 1567 Antler Point | Eagan, MN 55122 | 1061068 |
| 19 | Homeland Fireworks, Inc | P.O. Box 7 | Jamieson, OR 97909 | 1377525 |
| 20 | Island Fireworks Co., Inc | N1597 County Rd VV | Hager City, WI 54014 | 414583 |
| 21 | J&M Displays, Inc | 18064 170th Ave | Yarmouth, IA 52660 | 377461 |
| 22 | Lantis Fireworks, Inc | 130 Sodrac Dr., Box 229 | N. Sioux City, SD 57049 | 534052 |
| 23 | Legion Fireworks Co., Inc | 10 Legion Lane | Wappingers Falls, NY 12590 | 554391 |
| 24 | Miand Inc. dba Planet Productions (Mad Bomber) | P.O. Box 294, 3999 Hupp Road R31. | Kingsbury, IN 46345 | 777176 |

| Motor carrier | Street address | City, state, zip code | DOT No. |
|---|---|---|---|
| 25 Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics. | P.P. Box 322 | Hallowell, ME 04347 | 734974 |
| 26 Melrose Pyrotechnics, Inc | 1 Kinsgubury Industrial Park | Kingsbury, IN 46345 | 434586 |
| 27 Precocious Pyrotechnics, Inc | 4420–278th Ave NW | Belgrade, MN 56312 | 435931 |
| 28 Pyro Shows, Inc | 115 N 1st Street | LaFollette, TN 37766 | 456818 |
| 29 *Pyro Shows of Alabama, Inc | 3325 Poplar Lane | Adamsville, AL 35005 | 2859710 |
| 30 Pyro Shows of Texas, Inc | 6601 9 Mile Azle Rd | Fort Worth, TX 76135 | 2432196 |
| 31 Pyro Engineering Inc., dba/Bay Fireworks | 400 Broadhollow Rd. Ste #3 | Farmindale, NY 11735 | 530262 |
| 32 Pyro Spectaculars, Inc | 3196 N Locust Ave | Rialto, CA 92376 | 029329 |
| 33 Pyro Spectaculars North, Inc | 5301 Lang Avenue | McClellan, CA 95652 | 1671438 |
| 34 Pyrotechnic Display, Inc | 8450 W. St. Francis Rd | Frankfort, IL 60423 | 1929883 |
| 35 Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.) | 302 Wilson Rd | New Castle, PA 16105 | 526749 |
| 36 Pyrotecnico FX | 6965 Speedway Blvd. Suite 115. | Las Vegas, NV 89115 | 1610728 |
| 37 Rainbow Fireworks, Inc | 76 Plum Ave | Inman, KS 67546 | 1139643 |
| 38 RES Specialty Pyrotechnics | 21595 286th St | Belle Plaine, MN 56011 | 523981 |
| 39 Rozzi's Famous Fireworks, Inc | 11605 North Lebanon Rd | Loveland, OH 45140 | 0483686 |
| 40 Sky Wonder Pyrotechnics, LLC | 3626 CR 203 | Liverpool, TX 77577 | 1324580 |
| 41 Skyworks, Ltd | 13513 W. Carrier Rd | Carrier, OK 73727 | 1421047 |
| 42 Sorgi American Fireworks Michigan, LLC | 935 Wales Ridge Rd | Wales, MI 48027 | 2475727 |
| 43 Spielbauer Fireworks Co, Inc | 220 Roselawn Blvd | Green Bay, WI 54301 | 046479 |
| 44 Spirit of 76 | 6401 West Hwy 40 | Columbia, MO 65202 | 2138948 |
| 45 Starfire Corporation | 682 Cole Road | Carrolltown, PA 15722 | 554645 |
| 46 Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc | 2235 Vermont Route 14 South | East Montpelier, VT 05651 | 310632 |
| 47 Western Display Fireworks, Ltd | 10946 S. New Era Rd | Canby, OR 97013 | 498941 |
| 48 Western Enterprises, Inc | P.O. Box 160 | Carrier, OK 73727 | 203517 |
| 49 Wolverine Fireworks Display, Inc | 205 W Seidlers | Kawkawlin, MI | 376857 |
| 50 Young Explosives Corp | P.O. Box 18653 | Rochester, NY 14618 | 450304 |
| 51 Zambelli Fireworks MFG, Co., Inc | P.O. Box 1463 | New Castle, PA 16103 | 033167 |

* Not included in 2016 list of approved carriers.

[FR Doc. 2017–14262 Filed 7–3–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### Agency Information Collection Activities; Comment Request; Renewal Without Change of Bank Secrecy Act Recordkeeping Requirements

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), U.S. Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** FinCEN, a bureau of the U.S. Department of the Treasury (''Treasury''), invites all interested parties to comment on its proposed renewal without change of the Bank Secrecy Act (''BSA'') recordkeeping requirements addressed in this notice. FinCEN intends to submit these requirements for approval by the Office of Management and Budget (''OMB'') of a three-year extension of Control Numbers 1506–0050 through 1506–0059. This request for comments is made pursuant to the Paperwork Reduction Act (''PRA'') of 1995. In addition, FinCEN is seeking comment on 31 CFR 1010.430, the nature of records and retention period, which is not subject to the PRA because there is no information collection associated with it.[1]

**DATES:** Written comments should be received on or before September 5, 2017 to be assured of consideration.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2017–0008 and the specific OMB control number the comment applies to.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2017–0008 and the specific OMB control number.

Please submit comments by one method only. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Resource Center at 800–767–2825 or electronically at *frc@fincen.gov.*

**SUPPLEMENTARY INFORMATION:** The BSA, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829(b), 12 U.S.C. 1951–1959, and 31 U.S.C. *et seq.,* authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax and regulatory matters. Title III of the USA PATRIOT Act of 2001, Pub. L. 107–56, included certain amendments to the anti-money laundering provisions of Title II of the BSA, 31 U.S.C. 5311 *et seq.,* which are intended to aid in the prevention, detection and prosecution of international money laundering and terrorist financing. Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury to administer Title II of the BSA has been delegated to the Director of FinCEN. The information collected and retained under the regulation addressed in this notice assists Federal, state, and local law enforcement as well as regulatory authorities in the identification, investigation, and prosecution of money laundering and other matters. In accordance with the requirements of the PRA, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, the following information is presented concerning the recordkeeping requirements listed below.

*Title:* BSA Recordkeeping Requirements.

[1] This section applies to all the BSA recordkeeping rules; it imposes a 5-year record retention period for all BSA recordkeeping rules and includes a brief discussion of how to make the records. This paragraph is not subject to the PRA because it only deals with the retention time-period.

*OMB Numbers:* 1506–0050 through 1506–0059.

*Abstract:* In accordance with 31 CFR 1010.430, covered financial institutions are required to maintain records of certain financial transactions for a period of five years. Covered financial institutions may satisfy these requirements by using their internal records management system.

*Current Action:* Renewal without change to the existing regulations.

*Type of Review:* Extension of currently approved recordkeeping requirements.

*Affected Public:* Businesses or other for-profit institutions, and non-profit institutions.

1. *Title:* Administrative Rulings (31 CFR 1010.711–717).

*OMB Number:* 1506–0050.

*Current action:* This is a renewal without change of a currently approved PRA burden.

*Summary of proposed action:* FinCEN proposes renewing the PRA burden currently included in OMB Control Number 1506–0050. The sections under this control number are: (a) How to submit a ruling request (1010.711), (b) how non-conforming requests are handled (1010.712), (c) how oral communications are treated (1010.713), (d) how rulings are issued (1010.715), (e) how rulings are modified or rescinded (1010.716), and (f) how information in connection with a ruling may be disclosed (1010.717). Effective September 2009, all administrative rulings intended to have precedential value are published on the FinCEN Web site and may be reviewed at *https://www.fincen.gov/resources/statutes-regulations/administrative-rulings.*

*Burden:* The estimated number of responses (*i.e.,* request for a ruling) is 60 annually, with a burden of 1 hour per submission, for a total annual burden of 60 hours.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions, and non-profit institutions.

*Frequency:* N/A.

2. *Title:* Special Rules for Casinos (31 CFR 1021.210(b), 31 CFR 1021.100(a)–(e), and 31 CFR 1010.430).

*OMB Number:* 1506–0051.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions.

*Burden:* The estimated number of recordkeepers is 1341. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 134,100 hours.

3. *Title:* Additional Records to be made and retained by Currency Dealers or Exchangers (31 CFR 1022.410 and 31 CFR 1010.430).

*OMB Number:* 1506–0052.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions.

*Burden:* The estimated number of recordkeepers is 2,300. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 368,000 hours.

4. *Title:* Additional Records to be made and retained by Brokers or Dealers in Securities (31 CFR 1023.410 and 31 CFR 1010.410).

*OMB Number:* 1506–0053.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions.

*Burden:* The estimated number of recordkeepers is 8,300. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 830,000 hours.

5. *Title:* Additional Records to be made and retained by Casinos (31 CFR 1021.410 (except 31 CFR 1021.410(b)(10)) and 31 CFR 1010.430).

*OMB Number:* 1506–0054.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions.

*Burden:* Total burden of 119,604 hours.

The burden for the action will be as follows:

*31 CFR 1021.410(a) & (b)(1)–(8).* The estimated number of recordkeepers is 912. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 91,200.

*31 CFR 1021.410(b)(9).* The estimated number of recordkeepers is 912. The estimated annual recordkeeping burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 6,840 hours.

*31 CFR 1021.410(b)(11).* The estimated number of recordkeepers is 350. The estimated number of transactions is 215,000 annually with a burden per transaction of 5 minutes for a total estimated annual recordkeeping burden of 17,916 hours.

*31 CFR 1021.410(c).* The estimated number of respondents is 912. The estimated annual recordkeeping burden per recordkeeper is 4 hours, for a total estimated annual recordkeeping burden of 3,648 hours.

6. *Title:* Reports of Transactions with Foreign Financial Agencies (31 CFR 1010.360).[2]

*OMB Number:* 1506–0055.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions, and non-profit institutions.

*Burden:* The estimated number of respondents per year is 20. The estimated number of responses is 20 with a reporting burden of 5 hours per respondent for a total annual burden of 100 hours.

7. *Title:* Reports of Certain Domestic Coin and Currency Transactions (31 CFR 1010.370 and 31 CFR 1010.410(d)).

*OMB Number:* 1506–0056.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions, and non-profit institutions.

*Burden:* The estimated number of respondents per year is 3,200. The estimated number of responses is 17,000, with a reporting burden of 19 minutes per response and a recordkeeping burden of 5 minutes per response. Total estimated burden 6,800 hours.[3]

8. *Title:* Purchases of Bank Checks and Drafts, Cashier's Checks, Money Orders, and Traveler's Checks (31 CFR 1010.415, and 31 CFR 1010.430).

*OMB Number:* 1506–0057.

[2] Treasury may, by regulation, require specified financial institutions to report transactions by persons with designated foreign financial agencies.

[3] Although the burden is stated as an annual burden in accordance with the PRA, the estimated annual burden is not intended to indicate that there is a geographic targeting order in effect throughout a year or in each year.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions, and non-profit institutions.

*Burden:* The estimated number of recordkeepers is 60,900. The average burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 456,750 hours.

9. *Title:* Records to be made and retained by Financial Institutions (31 CFR 1010.410 (except 1010.410(d)) and 31 CFR 1010.430).

*OMB Number:* 1506–0058.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions, and non-profit institutions.

*Burden:* Total of 2,139,000 hours.

The burden for this action will be as follows:

*31 CFR 1010.410(a)–(c).* The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 50 hours, for a total estimated annual recordkeeping burden of 1,145,000 hours.

*31 CFR 1010.410(e)–(f).* The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 568,000.

*31 CFR 1010.410(g).* The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 12 hours, for a total estimated annual recordkeeping burden of 426,000.

10. *Title:* Additional Records to be made and retained by Banks (31 CFR 1020.410 and 31 CFR 1010.430).

*OMB Number:* 1506–0059.

*Current Action:* This is a renewal without change of a currently approved PRA burden.

*Type of Review:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses or other for-profit institutions, and non-profit institutions.

*Burden:* The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 100 hours for a total annual recordkeeping burden of 2,290,000 hours.

The following paragraph applies to the recordkeeping requirements addressed in this notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

**Jamal El Hindi,**

*Deputy Director, Financial Crimes Enforcement Network.*

[FR Doc. 2017–14257 Filed 7–6–17; 8:45 am]

**BILLING CODE 4810–02–P**

# FEDERAL REGISTER

Vol. 82 Friday,
No. 129 July 7, 2017

Part II

## Department of Education

34 CFR Parts 200 and 299
Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans; Final Rule

## DEPARTMENT OF EDUCATION

**34 CFR Parts 200 and 299**

**[Docket ID ED–2016–OESE–0032]**

**RIN 1810–AB27**

## Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations; CRA revocation.

**SUMMARY:** Under the Congressional Review Act, Congress has passed, and the President has signed, a resolution of disapproval of the accountability and State plans final regulations that were published on November 29, 2016. Because the resolution of disapproval invalidates these final regulations, the Department of Education (Department) is hereby removing these final regulations from the Code of Federal Regulations.

**DATES:** This action is effective July 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Melissa Siry, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W104, Washington, DC 20202. Telephone: (202) 260–0926 or by email: *Melissa.Siry@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On November 29, 2016, the Department published the accountability and State plans final regulations (81 FR 86076). The regulations were effective on March 21, 2017. On March 27, 2017, President Trump signed into law Congress' resolution of disapproval of the accountability and State plans final regulations under the Congressional Review Act as Public Law 115–13. Section 801(f) of the Congressional Review Act states that ''[a]ny rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.'' Accordingly, the Department is hereby removing the accountability and State plans final regulations from the Code of Federal Regulations, and ensuring the CFR is returned to the state it would have been if this ''rule had never taken effect.'' Consistent with Executive Order 13777, the Department is evaluating all existing regulations and making recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. As part of that effort, we will review the regulations in parts 200 and 299.

### List of Subjects

*34 CFR Part 200*

Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

*34 CFR Part 299*

Administrative practice and procedure, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: June 7, 2017.

**Betsy DeVos,**

*Secretary of Education.*

### Amendment to 34 CFR Chapter II

For the reasons discussed in the preamble, and under the authority of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and Public Law 115–13 (March 27, 2017), the Secretary of Education amends parts 200 and 299 of title 34 of the Code of Federal Regulations as follows:

## PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 is revised to read as follows:

**Authority:** 20 U.S.C. 6301 through 6578, unless otherwise noted.

■ 2. Section 200.7 is added to read as follows:

**§ 200.7 Disaggregation of data.**

(a) *Statistically reliable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2)(i) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to—

(A) Yield statistically reliable information for each purpose for which disaggregated data are used; and

(B) Ensure that, to the maximum extent practicable, all student subgroups in § 200.13(b)(7)(ii) (economically disadvantaged students; students from major racial and ethnic groups; students with disabilities as defined in section 9101(5) of the Act; and students with limited English proficiency as defined in section 9101(25) of the Act) are included, particularly at the school level, for purposes of making accountability determinations.

(ii) Each State must revise its Consolidated State Application Accountability Workbook under section 1111 of the Act to include—

(A) An explanation of how the State's minimum group size meets the requirements of paragraph (a)(2)(i) of this section;

(B) An explanation of how other components of the State's definition of adequate yearly progress (AYP), in addition to the State's minimum group size, interact to affect the statistical reliability of the data and to ensure the maximum inclusion of all students and student subgroups in § 200.13(b)(7)(ii); and

(C) Information regarding the number and percentage of students and student subgroups in § 200.13(b)(7)(ii) excluded from school-level accountability determinations.

(iii) Each State must submit a revised Consolidated State Application Accountability Workbook in accordance with paragraph (a)(2)(ii) of this section to the Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act in time for any changes to be in effect for AYP determinations based on school year 2009–2010 assessment results.

(iv) Beginning with AYP decisions that are based on the assessments administered in the 2007–08 school year, a State may not establish a different minimum number of students under paragraph (a)(2)(i) of this section for separate subgroups under § 200.13(b)(7)(ii) or for the school as a whole.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education

Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making AYP on the basis of the performance of each subgroup under section 1111(b)(2)(C)(v) of the Act.

(4) Each State shall include in its State plan, and each State and LEA shall implement, appropriate strategies to protect the privacy of individual students in reporting achievement results under section 1111(h) of the Act and in determining whether schools and LEAs are making AYP on the basis of disaggregated subgroups.

(c) *Inclusion of subgroups in assessments.* If a subgroup under § 200.2(b)(10) is not of sufficient size to produce statistically reliable results, the State must still include students in that subgroup in its State assessments under § 200.2.

(d) *Disaggregation at the LEA and State.* If the number of students in a subgroup is not statistically reliable at the school level, the State must include those students in disaggregations at each level for which the number of students is statistically reliable—*e.g.,* the LEA or State level.

(Authority: 20 U.S.C. 6311(b)(3); 1232g)

■ 3. Section 200.12 is revised to read as follows:

**§ 200.12 Single statewide accountability system.**

(a)(1) Each State must demonstrate in its State plan that the State has developed and is implementing, beginning with the 2002–2003 school year, a single, statewide accountability system.

(2) The State's accountability system must be effective in ensuring that all public elementary and secondary schools and LEAs in the State make AYP as defined in §§ 200.13 through 200.20.

(b) The State's accountability system must—

(1) Be based on the State's academic standards under § 200.1, academic assessments under § 200.2, and other academic indicators under § 200.19;

(2) Take into account the achievement of all public elementary and secondary school students;

(3) Be the same accountability system the State uses for all public elementary and secondary schools and all LEAs in the State; and

(4) Include sanctions and rewards that the State will use to hold public elementary and secondary schools and LEAs accountable for student achievement and for making AYP, except that the State is not required to subject schools and LEAs not participating under subpart A of this part to the requirements of section 1116 of the ESEA.

(Authority: 20 U.S.C. 6311(b)(2)(A))

**§ 200.12 [Amended]**

■ 4. Add an undesignated center heading ''Adequate Yearly Progress (AYP)'' following § 200.12.

■ 5. Section 200.13 is revised to read as follows:

**§ 200.13 Adequate yearly progress in general.**

(a) Each State must demonstrate in its State plan what constitutes AYP of the State and of all public schools and LEAs in the State—

(1) Toward enabling all public school students to meet the State's student academic achievement standards; while

(2) Working toward the goal of narrowing the achievement gaps in the State, its LEAs, and its public schools.

(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Applies the same high standards of academic achievement to all public school students in the State, except as provided in paragraph (c) of this section;

(2) Is statistically valid and reliable;

(3) Results in continuous and substantial academic improvement for all students;

(4) Measures the progress of all public schools, LEAs, and the State based primarily on the State's academic assessment system under § 200.2;

(5) Measures progress separately for reading/language arts and for mathematics;

(6) Is the same for all public schools and LEAs in the State; and

(7) Consistent with § 200.7, applies the same annual measurable objectives under § 200.18 separately to each of the following:

(i) All public school students.

(ii) Students in each of the following subgroups:

(A) Economically disadvantaged students.

(B) Students from major racial and ethnic groups.

(C) Students with disabilities, as defined in section 9101(5) of the ESEA.

(D) Students with limited English proficiency, as defined in section 9101(25) of the ESEA.

(c)(1) In calculating AYP for schools, LEAs, and the State, a State must, consistent with § 200.7(a), include the scores of all students with disabilities.

(2) A State may include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards described in § 200.1(d), provided that the number of those scores at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics.

(3) A State may not request from the Secretary an exception permitting it to exceed the cap on proficient and advanced scores based on alternate academic achievement standards under paragraph (c)(2) of this section.

(4)(i) A State may grant an exception to an LEA permitting it to exceed the 1.0 percent cap on proficient and advanced scores based on the alternate academic achievement standards described in paragraph (c)(2) of this section only if—

(A) The LEA demonstrates that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed;

(B) The LEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the LEA that have drawn large numbers of families of students with the most significant cognitive disabilities, or that the LEA has such a small overall student population that it would take only a few students with such disabilities to exceed the 1.0 percent cap; and

(C) The LEA documents that it is implementing the State's guidelines under § 200.1(f).

(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted.

(5) In calculating AYP, if the percentage of proficient and advanced scores based on alternate academic achievement standards under § 200.1(d) exceeds the cap in paragraph (c)(2) of this section at the State or LEA level, the State must do the following:

(i) Consistent with § 200.7(a), include all scores based on alternate academic achievement standards.

(ii) Count as non-proficient the proficient and advanced scores that exceed the cap in paragraph (c)(2) of this section.

(iii) Determine which proficient and advanced scores to count as non-proficient in schools and LEAs responsible for students who are assessed based on alternate academic achievement standards.

(iv) Include non-proficient scores that exceed the cap in paragraph (c)(2) of this section in each applicable subgroup at the school, LEA, and State level.

(v) Ensure that parents of a child who is assessed based on alternate academic achievement standards are informed of the actual academic achievement levels of their child.

(d) The State must establish a way to hold accountable schools in which no grade level is assessed under the State's academic assessment system (*e.g.,* K–2 schools), although the State is not required to administer a formal assessment to meet this requirement.

(Authority: 20 U.S.C. 6311(b)(2))

■ 6. Section 200.14 is revised to read as follows:

**§ 200.14 Components of Adequate Yearly Progress.**

A State's definition of AYP must include all of the following:

(a) A timeline in accordance with § 200.15.

(b) Starting points in accordance with § 200.16.

(c) Intermediate goals in accordance with § 200.17.

(d) Annual measurable objectives in accordance with § 200.18.

(e) Other academic indicators in accordance with § 200.19.

(Authority: 20 U.S.C. 6311(b)(2))

■ 7. Section 200.15 is revised to read as follows:

**§ 200.15 Timeline.**

(a) Each State must establish a timeline for making AYP that ensures that, not later than the 2013–2014 school year, all students in each group described in § 200.13(b)(7) will meet or exceed the State's proficient level of academic achievement.

(b) Notwithstanding subsequent changes a State may make to its academic assessment system or its definition of AYP under §§ 200.13 through 200.20, the State may not extend its timeline for all students to reach proficiency beyond the 2013–2014 school year.

(Authority: 20 U.S.C. 6311(b)(2))

■ 8. Section 200.16 is revised to read as follows:

**§ 200.16 Starting points.**

(a) Using data from the 2001–2002 school year, each State must establish starting points in reading/language arts and in mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement.

(b) Each starting point must be based, at a minimum, on the higher of the following percentages of students at the proficient level:

(1) The percentage in the State of proficient students in the lowest-achieving subgroup of students under § 200.13(b)(7)(ii).

(2) The percentage of proficient students in the school that represents 20 percent of the State's total enrollment among all schools ranked by the percentage of students at the proficient level. The State must determine this percentage as follows:

(i) Rank each school in the State according to the percentage of proficient students in the school.

(ii) Determine 20 percent of the total enrollment in all schools in the State.

(iii) Beginning with the lowest-ranked school, add the number of students enrolled in each school until reaching the school that represents 20 percent of the State's total enrollment among all schools.

(iv) Identify the percentage of proficient students in the school identified in paragraph (b)(2)(iii) of this section.

(c)(1) Except as permitted under paragraph (c)(2) of this section, each starting point must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7).

(2) A State may use the procedures under paragraph (b) of this section to establish separate starting points by grade span.

(Authority: 20 U.S.C. 6311(b)(2))

■ 9. Section 200.17 is revised to read as follows:

**§ 200.17 Intermediate goals.**

Each State must establish intermediate goals that increase in equal increments over the period covered by the timeline under § 200.15 as follows:

(a) The first incremental increase must take effect not later than the 2004–2005 school year.

(b) Each following incremental increase must occur in not more than three years.

(Authority: 20 U.S.C. 6311(b)(2))

■ 10. Section 200.18 is revised to read as follows:

**§ 200.18 Annual measurable objectives.**

(a) Each State must establish annual measurable objectives that—

(1) Identify for each year a minimum percentage of students that must meet or exceed the proficient level of academic achievement on the State's academic assessments; and

(2) Ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline under § 200.15.

(b) The State's annual measurable objectives—

(1) Must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7); and

(2) May be the same for more than one year, consistent with the State's intermediate goals under § 200.17.

(Authority: 20 U.S.C. 6311(b)(2))

■ 11. Section 200.19 is revised to read as follows:

**§ 200.19 Other academic indicators.**

(a) *Elementary and middle schools.* (1) *Choice of indicator.* To determine AYP, consistent with § 200.14(e), each State must use at least one other academic indicator for public elementary schools and at least one other academic indicator for public middle schools, such as those in paragraph (c) of this section.

(2) *Goals.* A State may, but is not required to, increase the goals of its other academic indicators over the course of the timeline under § 200.15.

(3) *Reporting.* A State and its LEAs must report under section 1111(h) of the Act (annual report cards) performance on the academic indicators for elementary and middle schools at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(4) *Determining AYP.* A State—

(i) Must disaggregate its other academic indicators for elementary and middle schools by each subgroup described in § 200.13(b)(7)(ii) for purposes of determining AYP under § 200.20(b)(2) (''safe harbor'') and as required under section 1111(b)(2)(C)(vii) of the Act (additional academic indicators under paragraph (c) of this section); but

(ii) Need not disaggregate those indicators for determining AYP under § 200.20(a)(1)(ii) (meeting the State's annual measurable objectives).

(b) *High schools*—(1) *Graduation rate.* Consistent with paragraphs (b)(4) and (b)(5) of this section regarding reporting and determining AYP, respectively, each State must calculate a graduation rate, defined as follows, for all public high schools in the State:

(i)(A) A State must calculate a ''four-year adjusted cohort graduation rate,'' defined as the number of students who graduate in four years with a regular high school diploma divided by the number of students who form the adjusted cohort for that graduating class.

(B) For those high schools that start after grade nine, the cohort must be calculated based on the earliest high school grade.

(ii) The term ''adjusted cohort'' means the students who enter grade 9 (or the earliest high school grade) and any students who transfer into the cohort in grades 9 through 12 minus any students removed from the cohort.

(A) The term ''students who transfer into the cohort'' means the students who enroll after the beginning of the entering cohort's first year in high school, up to and including in grade 12.

(B) To remove a student from the cohort, a school or LEA must confirm in writing that the student transferred out, emigrated to another country, or is deceased.

(*1*) To confirm that a student transferred out, the school or LEA must have official written documentation that the student enrolled in another school or in an educational program that culminates in the award of a regular high school diploma.

(*2*) A student who is retained in grade, enrolls in a General Educational Development (GED) program, or leaves school for any other reason may not be counted as having transferred out for the purpose of calculating graduation rate and must remain in the adjusted cohort.

(iii) The term ''students who graduate in four years'' means students who earn a regular high school diploma at the conclusion of their fourth year, before the conclusion of their fourth year, or during a summer session immediately following their fourth year.

(iv) The term ''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 GED credential, certificate of attendance, or any alternative award.

(v) In addition to calculating a four-year adjusted cohort graduation rate, a State may propose to the Secretary for approval an ''extended-year adjusted cohort graduation rate.''

(A) An extended-year adjusted cohort graduation rate is defined as the number of students who graduate in four years or more with a regular high school diploma divided by the number of students who form the adjusted cohort for the four-year adjusted cohort graduation rate, provided that the adjustments account for any students who transfer into the cohort by the end of the year of graduation being considered minus the number of students who transfer out, emigrate to another country, or are deceased by the end of that year.

(B) A State may calculate one or more extended-year adjusted cohort graduation rates.

(2) *Transitional graduation rate.* (i) Prior to the deadline in paragraph (b)(4)(ii)(A) of this section, a State must calculate graduation rate as defined in paragraph (b)(1) of this section or use, on a transitional basis—

(A) A graduation rate that measures the percentage of students from the beginning of high school who graduate with a regular high school diploma in the standard number of years; or

(B) Another definition, developed by the State and approved by the Secretary, that more accurately measures the rate of student graduation from high school with a regular high school diploma.

(ii) For a transitional graduation rate calculated under paragraph (b)(2)(i) of this section—

(A) ''Regular high school diploma'' has the same meaning as in paragraph (b)(1)(iv) of this section;

(B) ''Standard number of years'' means four years unless a high school begins after ninth grade, in which case the standard number of years is the number of grades in the school; and

(C) A dropout may not be counted as a transfer.

(3) *Goal and targets.* (i) A State must set—

(A) A single graduation rate goal that represents the rate the State expects all high schools in the State to meet; and

(B) Annual graduation rate targets that reflect continuous and substantial improvement from the prior year toward meeting or exceeding the graduation rate goal.

(ii) Beginning with AYP determinations under § 200.20 based on school year 2009–2010 assessment results, in order to make AYP, any high school or LEA that serves grade 12 and the State must meet or exceed—

(A) The graduation rate goal set by the State under paragraph (b)(3)(i)(A) of this section; or

(B) The State's targets for continuous and substantial improvement from the prior year, as set by the State under paragraph (b)(3)(i)(B) of this section.

(4) *Reporting.* (i) In accordance with the deadlines in paragraph (b)(4)(ii) of this section, a State and its LEAs must report under section 1111(h) of the Act (annual report cards) graduation rate at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(ii)(A) Beginning with report cards providing results of assessments administered in the 2010–2011 school year, a State and its LEAs must report the four-year adjusted cohort graduation rate calculated in accordance with paragraph (b)(1)(i) through (iv) of this section.

(B) If a State adopts an extended-year adjusted cohort graduation rate calculated in accordance with paragraph (b)(1)(v) of this section, the State and its LEAs must report, beginning with the first year for which the State calculates such a rate, the extended-year adjusted cohort graduation rate separately from the four-year adjusted cohort graduation rate.

(C) Prior to the deadline in paragraph (b)(4)(ii)(A) of this section, a State and its LEAs must report a graduation rate calculated in accordance with paragraph (b)(1) or (b)(2) of this section in the aggregate and disaggregated by the subgroups in § 200.13(b)(7)(ii).

(5) *Determining AYP.* (i) Beginning with AYP determinations under § 200.20 based on school year 2011–2012 assessment results, a State must calculate graduation rate under paragraph (b)(1) of this section at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(ii) Prior to the AYP determinations described in paragraph (b)(5)(i) of this section, a State must calculate graduation rate in accordance with either paragraph (b)(1) or (b)(2) of this section—

(A) In the aggregate at the school, LEA, and State levels for determining AYP under § 200.20(a)(1)(ii) (meeting the State's annual measurable objectives), except as provided in paragraph (b)(7)(iii) of this section; but

(B) In the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii) for purposes of determining AYP under § 200.20(b)(2) (''safe harbor'') and as required under section 1111(b)(2)(C)(vii) of the Act (additional academic indicators under paragraph (c) of this section).

(6) *Accountability workbook.* (i) A State must revise its Consolidated State Application Accountability Workbook submitted under section 1111 of the Act to include the following:

(A) The State's graduation rate definition that the State will use to determine AYP based on school year 2009–2010 assessment results.

(B) The State's progress toward meeting the deadline in paragraph (b)(4)(ii)(A) of this section for calculating and reporting the four-year adjusted cohort graduation rate defined in paragraph (b)(1)(i) through (iv) of this section.

(C) The State's graduation rate goal and targets.

(D) An explanation of how the State's graduation rate goal represents the rate the State expects all high schools in the State to meet and how the State's targets demonstrate continuous and substantial

improvement from the prior year toward meeting or exceeding the goal.

(E) The graduation rate for the most recent school year of the high school at the 10th percentile, the 50th percentile, and the 90th percentile in the State (ranked in terms of graduation rate).

(F) If a State uses an extended-year adjusted cohort graduation rate, a description of how it will use that rate with its four-year adjusted cohort graduation rate to determine whether its schools and LEAs have made AYP.

(ii) Each State must submit, consistent with the timeline in § 200.7(a)(2)(iii), its revised Consolidated State Application Accountability Workbook in accordance with paragraph (b)(6)(i) of this section to the Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act.

(7) *Extension.* (i) If a State cannot meet the deadline in paragraph (b)(4)(ii)(A) of this section, the State may request an extension of the deadline from the Secretary.

(ii) To receive an extension, a State must submit to the Secretary, by March 2, 2009—

(A) Evidence satisfactory to the Secretary demonstrating that the State cannot meet the deadline in paragraph (b)(4)(ii)(A) of this section; and

(B) A detailed plan and timeline addressing the steps the State will take to implement, as expeditiously as possible, a graduation rate consistent with paragraph (b)(1)(i) through (iv) of this section.

(iii) A State that receives an extension under this paragraph must, beginning with AYP determinations under § 200.20 based on school year 2011–2012 assessment results, calculate graduation rate under paragraph (b)(2) of this section at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(c) The State may include additional academic indicators determined by the State, including, but not limited to, the following:

(1) Additional State or locally administered assessments not included in the State assessment system under § 200.2.

(2) Grade-to-grade retention rates.

(3) Attendance rates.

(4) Percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

(d) A State must ensure that its other academic indicators are—

(1) Valid and reliable;

(2) Consistent with relevant, nationally recognized professional and technical standards, if any; and

(3) Consistent throughout the State within each grade span.

(e) Except as provided in § 200.20(b)(2), a State—

(1) May not use the indicators in paragraphs (a) through (c) of this section to reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring if those indicators were not used; but

(2) May use the indicators to identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(2), (h))

■ 12. Section 200.20 is revised to read as follows:

**§ 200.20 Making adequate yearly progress.**

A school or LEA makes AYP if it complies with paragraph (c) and with either paragraph (a) or (b) of this section separately in reading/language arts and in mathematics.

(a)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

(i) Each group of students under § 200.13(b)(7) meets or exceeds the State's annual measurable objectives under § 200.18; and

(ii) The school or LEA, respectively, meets or exceeds the State's other academic indicators under § 200.19.

(2) For a group under § 200.13(b)(7) to be included in the determination of AYP for a school or LEA, the number of students in the group must be sufficient to yield statistically reliable information under § 200.7(a).

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes AYP if, consistent with paragraph (f) of this section—

(1) The percentage of students in that group below the State's proficient achievement level decreased by at least 10 percent from the preceding year; and

(2) That group made progress on one or more of the State's academic indicators under § 200.19 or the LEA's academic indicators under § 200.30(c).

(c)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

(i) Not less than 95 percent of the students enrolled in each group under § 200.13(b)(7) takes the State assessments under § 200.2; and

(ii) The group is of sufficient size to produce statistically reliable results under § 200.7(a).

(2) The requirement in paragraph (c)(1) of this section does not authorize a State, LEA, or school to systematically exclude 5 percent of the students in any group under § 200.13(b)(7).

(3) To count a student who is assessed based on alternate academic achievement standards described in § 200.1(d) as a participant for purposes of meeting the requirements of this paragraph, the State must have, and ensure that its LEAs adhere to, guidelines that meet the requirements of § 200.1(f).

(d) For the purpose of determining whether a school or LEA has made AYP, a State may establish a uniform procedure for averaging data that includes one or more of the following:

(1) *Averaging data across school years.* (i) A State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

(ii) If a State averages data across school years, the State must—

(A) Implement, on schedule, the assessments in reading/language arts and mathematics in grades 3 through 8 and once in grades 10 through 12 required under § 200.5(a)(2);

(B) Report data resulting from the assessments under § 200.5(a)(2);

(C) Determine AYP under §§ 200.13 through 200.20, although the State may base that determination on data only from the reading/language arts and mathematics assessments in the three grade spans required under § 200.5(a)(1); and

(D) Implement the requirements in section 1116 of the ESEA.

(iii) A State that averages data across years must determine AYP on the basis of the assessments under § 200.5(a)(2) as soon as it has data from two or three years to average. Until that time, the State may use data from the reading/language arts and mathematics assessments required under § 200.5(a)(1) to determine adequate yearly progress.

(2) *Combining data across grades.* Within each subject area and subgroup, the State may combine data across grades in a school or LEA.

(e)(1) In determining the AYP of an LEA, a State must include all students who were enrolled in schools in the LEA for a full academic year, as defined by the State.

(2) In determining the AYP of a school, the State may not include students who were not enrolled in that school for a full academic year, as defined by the State.

(f)(1) In determining AYP for a school or LEA, a State may—

(i) Count recently arrived limited English proficient students as having participated in the State assessments for

purposes of meeting the 95 percent participation requirement under paragraph (c)(1)(i) of this section if they take—

(A) Either an assessment of English language proficiency under § 200.6(b)(3) or the State's reading/language arts assessment under § 200.2; and

(B) The State's mathematics assessment under § 200.2; and

(ii) Choose not to include the scores of recently arrived limited English proficient students on the mathematics assessment, the reading/language arts assessment (if administered to these students), or both, even if these students have been enrolled in the same school or LEA for a full academic year as defined by the State.

(2)(i) In determining AYP for the subgroup of limited English proficient students and the subgroup of students with disabilities, a State may include, for up to two AYP determination cycles, the scores of—

(A) Students who were limited English proficient but who no longer meet the State's definition of limited English proficiency; and

(B) Students who were previously identified under section 602(3) of the IDEA but who no longer receive special education services.

(ii) If a State, in determining AYP for the subgroup of limited English proficient students and the subgroup of students with disabilities, includes the scores of the students described in paragraph (f)(2)(i) of this section, the State must include the scores of all such students, but is not required to—

(A) Include those students in the limited English proficient subgroup or in the students with disabilities subgroup in determining if the number of limited English proficient students or students with disabilities, respectively, is sufficient to yield statistically reliable information under § 200.7(a); or

(B) With respect to students who are no longer limited English proficient—

(*1*) Assess those students' English language proficiency under § 200.6(b)(3); or

(*2*) Provide English language services to those students.

(iii) For the purpose of reporting information on report cards under section 1111(h) of the Act—

(A) A State may include the scores of former limited English proficient students and former students with disabilities as part of the limited English proficient and students with disabilities subgroups, respectively, for the purpose of reporting AYP at the State level under section 1111(h)(1)(C)(ii) of the Act;

(B) An LEA may include the scores of former limited English proficient students and former students with disabilities as part of the limited English proficient and students with disabilities subgroups, respectively, for the purpose of reporting AYP at the LEA and school levels under section 1111(h)(2)(B) of the Act; but

(C) A State or LEA may not include the scores of former limited English proficient students or former students with disabilities as part of the limited English proficient or students with disabilities subgroup, respectively, in reporting any other information under section 1111(h) of the Act.

(g) *Student academic growth.* (1) A State may request authority under section 9401 of the Act to incorporate student academic growth in the State's definition of AYP under this section.

(2) A State's policy for incorporating student academic growth in the State's definition of AYP must—

(i) Set annual growth targets that—

(A) Will lead to all students, by school year 2013–2014, meeting or exceeding the State's proficient level of academic achievement on the State assessments under § 200.2;

(B) Are based on meeting the State's proficient level of academic achievement on the State assessments under § 200.2 and are not based on individual student background characteristics; and

(C) Measure student achievement separately in mathematics and reading/language arts;

(ii) Ensure that all students enrolled in the grades tested under § 200.2 are included in the State's assessment and accountability systems;

(iii) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);

(iv) Be based on State assessments that—

(A) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;

(B) Have been in use by the State for more than one year; and

(C) Have received full approval from the Secretary before the State determines AYP based on student academic growth;

(v) Track student progress through the State data system;

(vi) Include, as separate factors in determining whether schools are making AYP for a particular year—

(A) The rate of student participation in assessments under § 200.2; and

(B) Other academic indicators as described in § 200.19; and

(vii) Describe how the State's annual growth targets fit into the State's accountability system in a manner that ensures that the system is coherent and that incorporating student academic growth into the State's definition of AYP does not dilute accountability.

(3) A State's proposal to incorporate student academic growth in the State's definition of AYP will be peer reviewed under the process established by the Secretary under section 1111(e)(2) of the Act.

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi); 7861)

■ 13. Section 200.21 is revised to read as follows:

**§ 200.21 Adequate yearly progress of a State.**

For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the ESEA, the Secretary must, beginning with the 2004–2005 school year, annually review whether the State has—

(a)(1) Made AYP as defined by the State in accordance with §§ 200.13 through 200.20 for each group of students in § 200.13(b)(7); and

(2) Met its annual measurable achievement objectives under section 3122(a) of the ESEA relating to the development and attainment of English proficiency by limited English proficient students.

(b) A State must include all students who were enrolled in schools in the State for a full academic year in reporting on the yearly progress of the State.

(Authority: 20 U.S.C. 7325)

■ 14. Section 200.22 is revised to read as follows:

**§ 200.22 National Technical Advisory Council.**

(a) To provide advice to the Department on technical issues related to the design and implementation of standards, assessments, and accountability systems, the Secretary shall establish a National Technical Advisory Council (hereafter referred to as the ''National TAC''), which shall be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended; 5 U.S.C. App.).

(b)(1) The members of the National TAC must include persons who have knowledge of and expertise in the design and implementation of educational standards, assessments, and accountability systems for all students, including students with disabilities and limited English proficient students, and experts with technical knowledge related to statistics and psychometrics.

(2) The National TAC shall be composed of 10 to 20 members who

may meet as a whole or in committees, as the Secretary may determine.

(3) The Secretary shall, through a notice published in the **Federal Register**—

(i) Solicit nominations from the public for members of the National TAC; and

(ii) Publish the list of members, once selected.

(4) The Secretary shall screen nominees for membership on the National TAC for potential conflicts of interest to prevent, to the extent possible, such conflicts, or the appearance thereof, in the National TAC's performance of its responsibilities under this section.

(c) The Secretary shall use the National TAC to provide its expert opinions on matters that arise during the State Plan review process.

(d) The Secretary shall prescribe and publish the rules of procedure for the National TAC.

(Authority: 20 U.S.C. 6311(e))

**§ 200.23 [Removed and Reserved]**

■ 15. Remove and reserve § 200.23.

**§ 200.24 [Removed and Reserved]**

■ 16. Remove and reserve § 200.24.

**§ 200.29 [Amended]**

■ 17. Revise the undesignated center heading following § 200.29 to read as follows:

**LEA and School Improvement**

■ 18. Section 200.30 is revised to read as follows:

**§ 200.30 Local review.**

(a) Each LEA receiving funds under subpart A of this part must use the results of the State assessment system described in § 200.2 to review annually the progress of each school served under subpart A of this part to determine whether the school is making AYP in accordance with § 200.20.

(b)(1) In reviewing the progress of an elementary or secondary school operating a targeted assistance program, an LEA may choose to review the progress of only the students in the school who are served, or are eligible for services, under subpart A of this part.

(2) The LEA may exercise the option under paragraph (b)(1) of this section so long as the students selected for services under the targeted assistance program are those with the greatest need for special assistance, consistent with the requirements of section 1115 of the ESEA.

(c)(1) To determine whether schools served under subpart A of this part are making AYP, an LEA also may use any additional academic assessments or any other academic indicators described in the LEA's plan.

(2)(i) The LEA may use these assessments and indicators—

(A) To identify additional schools for school improvement or in need of corrective action or restructuring; and

(B) To permit a school to make AYP if, in accordance with § 200.20(b), the school also reduces the percentage of a student group not meeting the State's proficient level of academic achievement by at least 10 percent.

(ii) The LEA may not, with the exception described in paragraph (c)(2)(i)(B) of this section, use these assessments and indicators to reduce the number of, or change the identity of, the schools that would otherwise be identified for school improvement, corrective action, or restructuring if the LEA did not use these additional indicators.

(d) The LEA must publicize and disseminate the results of its annual progress review to parents, teachers, principals, schools, and the community.

(e) The LEA must review the effectiveness of actions and activities that schools are carrying out under subpart A of this part with respect to parental involvement, professional development, and other activities assisted under subpart A of this part.

(Authority: 20 U.S.C. 6316(a) and (b))

■ 19. Section 200.31 is revised to read as follows:

**§ 200.31 Opportunity to review school-level data.**

(a) Before identifying a school for school improvement, corrective action, or restructuring, an LEA must provide the school with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based.

(b)(1) If the principal of a school that an LEA proposes to identify for school improvement, corrective action, or restructuring believes, or a majority of the parents of the students enrolled in the school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal may provide supporting evidence to the LEA.

(2) The LEA must consider the evidence referred to in paragraph (b)(1) of this section before making a final determination.

(c) The LEA must make public a final determination of the status of the school with respect to identification not later than 30 days after it provides the school with the opportunity to review the data on which the proposed identification is based.

(Authority: 20 U.S.C. 6316(b)(2))

■ 20. Section 200.32 is revised to read as follows:

**§ 200.32 Identification for school improvement.**

(a)(1)(i) An LEA must identify for school improvement any elementary or secondary school served under subpart A of this part that fails, for two consecutive years, to make AYP as defined under §§ 200.13 through 200.20.

(ii) In identifying schools for improvement, an LEA—

(A) May base identification on whether a school did not make AYP because it did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for two consecutive years; but

(B) May not limit identification to those schools that did not make AYP only because they did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for the same subgroup under § 200.13(b)(7)(ii) for two consecutive years.

(2) The LEA must make the identification described in paragraph (a)(1) of this section before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year.

(b)(1) An LEA must treat any school that was in the first year of school improvement status on January 7, 2002 as a school that is in the first year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must, in accordance with § 200.44, provide public school choice to all students in the school.

(c)(1) An LEA must treat any school that was identified for school improvement for two or more consecutive years on January 7, 2002 as a school that is in its second year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must—

(i) In accordance with § 200.44, provide public school choice to all students in the school; and

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school.

(d) An LEA may remove from improvement status a school otherwise subject to the requirements of

paragraphs (b) or (c) of this section if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school makes AYP for a second consecutive year.

(e)(1) An LEA may, but is not required to, identify a school for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school fails to make AYP for a second consecutive year.

(2) An LEA that does not identify such a school for improvement, however, must count the 2001–2002 school year as the first year of not making AYP for the purpose of subsequent identification decisions under paragraph (a) of this section.

(f) If an LEA identifies a school for improvement after the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year—

(1) The school is subject to the requirements of school improvement under § 200.39 immediately upon identification, including the provision of public school choice; and

(2) The LEA must count that school year as a full school year for the purposes of subjecting the school to additional improvement measures if the school continues to fail to make AYP.

(Authority: 20 U.S.C. 6316)

■ 21. Section 200.33 is revised to read as follows:

**§ 200.33 Identification for corrective action.**

(a) If a school served by an LEA under subpart A of this part fails to make AYP by the end of the second full school year after the LEA has identified the school for improvement under § 200.32(a) or (b), or by the end of the first full school year after the LEA has identified the school for improvement under § 200.32(c), the LEA must identify the school for corrective action under § 200.42.

(b) If a school was subject to corrective action on January 7, 2002, the LEA must—

(1) Treat the school as a school identified for corrective action under § 200.42 for the 2002–2003 school year; and

(2) Not later than the first day of the 2002–2003 school year—

(i) In accordance with § 200.44, provide public school choice to all students in the school;

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school; and

(iii) Take corrective action under § 200.42.

(c) An LEA may remove from corrective action a school otherwise subject to the requirements of paragraphs (a) or (b) of this section if, on the basis of assessments administered by the LEA during the 2001–2002 school year, the school makes AYP for a second consecutive year.

(Authority: 20 U.S.C. 6316)

■ 22. Section 200.34 is revised to read as follows:

**§ 200.34 Identification for restructuring.**

(a) If a school continues to fail to make AYP after one full school year of corrective action under § 200.42, the LEA must prepare a restructuring plan for the school and make arrangements to implement the plan.

(b) If the school continues to fail to make AYP, the LEA must implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (a) of this section.

(Authority: 20 U.S.C. 6316(b)(8))

■ 23. Section 200.35 is revised to read as follows:

**§ 200.35 Delay and removal.**

(a) *Delay.* (1) An LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, under corrective action, or under restructuring if—

(i) The school makes AYP for one year; or

(ii) The school's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school.

(2) The LEA may not take into account a period of delay under paragraph (a) of this section in determining the number of consecutive years of the school's failure to make AYP.

(3) Except as provided in paragraph (b) of this section, the LEA must subject the school to further actions as if the delay never occurred.

(b) *Removal.* If any school identified for school improvement, corrective action, or restructuring makes AYP for two consecutive school years, the LEA may not, for the succeeding school year—

(1) Subject the school to the requirements of school improvement, corrective action, or restructuring; or

(2) Identify the school for improvement.

(Authority: 20 U.S.C. 6316(b))

■ 24. Section 200.36 is revised to read as follows:

**§ 200.36 Communication with parents.**

(a) Throughout the school improvement process, the State, LEA, or school must communicate with the parents of each child attending the school.

(b) The State, LEA, or school must ensure that, regardless of the method or media used, it provides the information required by §§ 200.37 and 200.38 to parents—

(1) In an understandable and uniform format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

(c) The State, LEA, or school must provide information to parents—

(1) Directly, through such means as regular mail or email, except that if a State does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and

(2) Through broader means of dissemination such as the internet, the media, and public agencies serving the student population and their families.

(d) All communications must respect the privacy of students and their families.

(Authority: 20 U.S.C. 6316)

■ 25. Section 200.37 is revised to read as follows:

**§ 200.37 Notice of identification for improvement, corrective action, or restructuring.**

(a) If an LEA identifies a school for improvement or subjects the school to corrective action or restructuring, the LEA must, consistent with the requirements of § 200.36, promptly notify the parent or parents of each child enrolled in the school of this identification.

(b) The notice referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary and secondary schools served by the LEA and the SEA involved.

(2) The reasons for the identification.

(3) An explanation of how parents can become involved in addressing the academic issues that led to identification.

(4)(i) An explanation of the parents' option to transfer their child to another public school, including the provision of transportation to the new school, in accordance with § 200.44.

(ii) The explanation of the parents' option to transfer must include, at a minimum, information on the academic achievement of the school or schools to which the child may transfer.

(iii) The explanation may include other information on the school or schools to which the child may transfer, such as—

(A) A description of any special academic programs or facilities;

(B) The availability of before- and after-school programs;

(C) The professional qualifications of teachers in the core academic subjects; and

(D) A description of parental involvement opportunities.

(iv) The explanation of the available school choices must be made sufficiently in advance of, but no later than 14 calendar days before, the start of the school year so that parents have adequate time to exercise their choice option before the school year begins.

(5)(i) If the school is in its second year of improvement or subject to corrective action or restructuring, a notice explaining how parents can obtain supplemental educational services for their child in accordance with § 200.45.

(ii) The annual notice of the availability of supplemental educational services must include, at a minimum, the following:

(A) The identity of approved providers of those services available within the LEA, including providers of technology-based or distance-learning supplemental educational services, and providers that make services reasonably available in neighboring LEAs.

(B) A brief description of the services, qualifications, and demonstrated effectiveness of the providers referred to in paragraph (b)(5)(ii)(A) of this section, including an indication of those providers who are able to serve students with disabilities or limited English proficient students.

(C) An explanation of the benefits of receiving supplemental educational services.

(iii) The annual notice of the availability of supplemental educational services must be—

(A) Clear and concise; and

(B) Clearly distinguishable from the other information sent to parents under this section.

(Authority: 20 U.S.C. 6316)

■ 26. Add § 200.38 to read as follows:

**§ 200.38 Information about action taken.**

(a) An LEA must publish and disseminate to the parents of each student enrolled in the school, consistent with the requirements of § 200.36, and to the public information regarding any action taken by a school and the LEA to address the problems that led to the LEA's identification of the school for improvement, corrective action, or restructuring.

(b) The information referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the school is doing to address the problem of low achievement.

(2) An explanation of what the LEA or SEA is doing to help the school address the problem of low achievement.

(3) If applicable, a description of specific corrective actions or restructuring plans.

(Authority: 20 U.S.C. 6316(b))

■ 27. Add § 200.39 to read as follows:

**§ 200.39 Responsibilities resulting from identification for school improvement.**

(a) If an LEA identifies a school for school improvement under § 200.32—

(1) The LEA must—

(i) Not later than the first day of the school year following identification, with the exception described in § 200.32(f), provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA; and

(ii) Ensure that the school receives technical assistance in accordance with § 200.40; and

(2) The school must develop or revise a school improvement plan in accordance with § 200.41.

(b) If a school fails to make AYP by the end of the first full school year after the LEA has identified it for improvement under § 200.32, the LEA must—

(1) Continue to provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA;

(2) Continue to ensure that the school receives technical assistance in accordance with § 200.40; and

(3) Make available supplemental educational services in accordance with § 200.45.

(c)(1) Except as provided in paragraph (c)(2) of this section, the LEA must prominently display on its Web site, in a timely manner to ensure that parents have current information, the following information regarding the LEA's implementation of the public school choice and supplemental educational services requirements of the Act and this part:

(i) Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in public school choice.

(ii) Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in supplemental educational services.

(iii) For the current school year, a list of supplemental educational services providers approved by the State to serve the LEA and the locations where services are provided.

(iv) For the current school year, a list of available schools to which students eligible to participate in public school choice may transfer.

(2) If the LEA does not have its own Web site, the SEA must include on the SEA's Web site the information required in paragraph (c)(1) of this section for the LEA.

(Authority: 20 U.S.C. 6316(b))

■ 28. Add § 200.40 to read as follows:

**§ 200.40 Technical assistance.**

(a) An LEA that identifies a school for improvement under § 200.32 must ensure that the school receives technical assistance as the school develops and implements its improvement plan under § 200.41 and throughout the plan's duration.

(b) The LEA may arrange for the technical assistance to be provided by one or more of the following:

(1) The LEA through the statewide system of school support and recognition described under section 1117 of the ESEA.

(2) The SEA.

(3) An institution of higher education that is in full compliance with all of the reporting provisions of Title II of the Higher Education Act of 1965.

(4) A private not-for-profit organization, a private for-profit organization, an educational service agency, or another entity with experience in helping schools improve academic achievement.

(c) The technical assistance must include the following:

(1) Assistance in analyzing data from the State assessment system, and other examples of student work, to identify and develop solutions to problems in—

(i) Instruction;

(ii) Implementing the requirements for parental involvement and professional development under this subpart; and

(iii) Implementing the school plan, including LEA- and school-level responsibilities under the plan.

(2) Assistance in identifying and implementing professional development and instructional strategies and methods

that have proved effective, through scientifically based research, in addressing the specific instructional issues that caused the LEA to identify the school for improvement.

(3) Assistance in analyzing and revising the school's budget so that the school allocates its resources more effectively to the activities most likely to—

(i) Increase student academic achievement; and

(ii) Remove the school from school improvement status.

(d) Technical assistance provided under this section must be based on scientifically based research.

(Authority: 20 U.S.C. 6316(b)(4))

■ 29. Add § 200.41 to read as follows:

**§ 200.41 School improvement plan.**

(a)(1) Not later than three months after an LEA has identified a school for improvement under § 200.32, the school must develop or revise a school improvement plan for approval by the LEA.

(2) The school must consult with parents, school staff, the LEA, and outside experts in developing or revising its school improvement plan.

(b) The school improvement plan must cover a 2-year period.

(c) The school improvement plan must—

(1) Specify the responsibilities of the school, the LEA, and the SEA serving the school under the plan, including the technical assistance to be provided by the LEA under § 200.40;

(2)(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in the core academic subjects at the school and address the specific academic issues that caused the LEA to identify the school for improvement; and

(ii) May include a strategy for implementing a comprehensive school reform model described in section 1606 of the ESEA;

(3) With regard to the school's core academic subjects, adopt policies and practices most likely to ensure that all groups of students described in § 200.13(b)(7) and enrolled in the school will meet the State's proficient level of achievement, as measured by the State's assessment system, not later than the 2013–2014 school year;

(4) Establish measurable goals that—

(i) Address the specific reasons for the school's failure to make adequate progress; and

(ii) Promote, for each group of students described in § 200.13(b)(7) and enrolled in the school, continuous and substantial progress that ensures that all these groups meet the State's annual measurable objectives described in § 200.18;

(5) Provide an assurance that the school will spend not less than 10 percent of the allocation it receives under subpart A of this part for each year that the school is in school improvement status, for the purpose of providing high-quality professional development to the school's teachers, principal, and, as appropriate, other instructional staff, consistent with section 9101(34) of the ESEA, that—

(i) Directly addresses the academic achievement problem that caused the school to be identified for improvement;

(ii) Is provided in a manner that affords increased opportunity for participating in that professional development; and

(iii) Incorporates teacher mentoring activities or programs;

(6) Specify how the funds described in paragraph (c)(5) of this section will be used to remove the school from school improvement status;

(7) Describe how the school will provide written notice about the identification to parents of each student enrolled in the school;

(8) Include strategies to promote effective parental involvement at the school; and

(9) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year.

(d)(1) Within 45 days of receiving a school improvement plan, the LEA must—

(i) Establish a peer-review process to assist with review of the plan;

(ii) Promptly review the plan;

(iii) Work with the school to make any necessary revisions; and

(iv) Approve the plan if it meets the requirements of this section.

(2) The LEA may condition approval of the school improvement plan on—

(i) Inclusion of one or more of the corrective actions specified in § 200.42; or

(ii) Feedback on the plan from parents and community leaders.

(e) A school must implement its school improvement plan immediately on approval of the plan by the LEA.

(Authority: 20 U.S.C. 6316(b)(3))

■ 30. Add § 200.42 to read as follows:

**§ 200.42 Corrective action.**

(a) *Definition.* ''Corrective action'' means action by an LEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure of a school that led the LEA to identify the school for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the school;

(2) Is designed to increase substantially the likelihood that each group of students described in § 200.13(b)(7) and enrolled in the school will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Requirements.* If an LEA identifies a school for corrective action, in accordance with § 200.33, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Continue to ensure that the school receives technical assistance consistent with the requirements of § 200.40.

(3) Make available supplemental educational services in accordance with § 200.45.

(4) Take at least one of the following corrective actions:

(i) Replace the school staff who are relevant to the school's failure to make AYP.

(ii) Institute and fully implement a new curriculum, including the provision of appropriate professional development for all relevant staff, that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students and of enabling the school to make AYP.

(iii) Significantly decrease management authority at the school level.

(iv) Appoint one or more outside experts to advise the school on—

(A) Revising the school improvement plan developed under § 200.41 to address the specific issues underlying the school's continued failure to make AYP and resulting in identification for corrective action; and

(B) Implementing the revised improvement plan.

(v) Extend for that school the length of the school year or school day.

(vi) Restructure the internal organization of the school.

(5) Continue to comply with § 200.39(c).

(Authority: 20 U.S.C. 6316(b)(7))

**§ 200.42 [Amended]**

■ 31. Remove the undesignated center heading ''Other State Plan Provisions'' following § 200.42.

■ 32. Revise § 200.43 to read as follows:

**§ 200.43 Restructuring.**

(a) *Definition.* ''Restructuring'' means a major reorganization of a school's governance arrangement by an LEA that—

(1) Makes fundamental reforms to improve student academic achievement in the school;

(2) Has substantial promise of enabling the school to make AYP as defined under §§ 200.13 through 200.20;

(3) Is consistent with State law;

(4) Is significantly more rigorous and comprehensive than the corrective action that the LEA implemented in the school under § 200.42, unless the school has begun to implement one of the options in paragraph (b)(3) of this section as a corrective action; and

(5) Addresses the reasons why the school was identified for restructuring in order to enable the school to exit restructuring as soon as possible.

(b) *Requirements.* If the LEA identifies a school for restructuring in accordance with § 200.34, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Make available supplemental educational services in accordance with § 200.45.

(3) Prepare a plan to carry out one of the following alternative governance arrangements:

(i) Reopen the school as a public charter school.

(ii) Replace all or most of the school staff (which may include, but may not be limited to, replacing the principal) who are relevant to the school's failure to make AYP.

(iii) Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the school as a public school.

(iv) Turn the operation of the school over to the SEA, if permitted under State law and agreed to by the State.

(v) Any other major restructuring of a school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance, in order to improve student academic achievement in the school and that has substantial promise of enabling the school to make AYP. The major restructuring of a school's governance may include replacing the principal so long as this change is part of a broader reform effort.

(4) Provide to parents and teachers—

(i) Prompt notice that the LEA has identified the school for restructuring; and

(ii) An opportunity for parents and teachers to—

(A) Comment before the LEA takes any action under a restructuring plan; and

(B) Participate in the development of any restructuring plan.

(5) Continue to comply with § 200.39(c).

(c) *Implementation.* (1) If a school continues to fail to make AYP, the LEA must—

(i) Implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (b)(3) of this section;

(ii) Continue to offer public school choice and supplemental educational services in accordance with §§ 200.44 and 200.45; and

(iii) Continue to comply with § 200.39(c).

(2) An LEA is no longer required to carry out the requirements of paragraph (c)(1) of this section if the restructured school makes AYP for two consecutive school years.

(d) *Rural schools.* On request, the Secretary will provide technical assistance for developing and carrying out a restructuring plan to any rural LEA—

(1) That has fewer than 600 students in average daily attendance at all of its schools; and

(2) In which all of the schools have a School Locale Code of 7 or 8, as determined by the National Center for Education Statistics.

(Authority: 20 U.S.C. 6316(b)(8))

■ 33. Add § 200.44 to read as follows:

**§ 200.44 Public school choice.**

(a) *Requirements.* (1) In the case of a school identified for school improvement under § 200.32, for corrective action under § 200.33, or for restructuring under § 200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA.

(2) The LEA must offer this option, through the notice required in § 200.37, so that students may transfer in the school year following the school year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring.

(3) The schools to which students may transfer under paragraph (a)(1) of this section—

(i) May not include schools that—

(A) The LEA has identified for improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34; or

(B) Are persistently dangerous as determined by the State; and

(ii) May include one or more public charter schools.

(4) If more than one school meets the requirements of paragraph (a)(3) of this section, the LEA must—

(i) Provide to parents of students eligible to transfer under paragraph (a)(1) of this section a choice of more than one such school; and

(ii) Take into account the parents' preferences among the choices offered under paragraph (a)(4)(i) of this section.

(5) The LEA must offer the option to transfer described in this section unless it is prohibited by State law in accordance with paragraph (b) of this section.

(6) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action before January 8, 2002, the State must ensure that the LEA provides a public school choice option in accordance with paragraph (a)(1) of this section not later than the first day of the 2002–2003 school year.

(b) *Limitation on State law prohibition.* An LEA may invoke the State law prohibition on choice described in paragraph (a)(5) of this section only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school.

(c) *Desegregation plans.* (1) If an LEA is subject to a desegregation plan, whether that plan is voluntary, court-ordered, or required by a Federal or State administrative agency, the LEA is not exempt from the requirement in paragraph (a)(1) of this section.

(2) In determining how to provide students with the option to transfer to another school, the LEA may take into account the requirements of the desegregation plan.

(3) If the desegregation plan forbids the LEA from offering the transfer option required under paragraph (a)(1) of this section, the LEA must secure appropriate changes to the plan to permit compliance with paragraph (a)(1) of this section.

(d) *Capacity.* An LEA may not use lack of capacity to deny students the option to transfer under paragraph (a)(1) of this section.

(e) *Priority.* (1) In providing students the option to transfer to another public school in accordance with paragraph (a)(1) of this section, the LEA must give priority to the lowest-achieving students from low-income families.

(2) The LEA must determine family income on the same basis that the LEA

uses to make allocations to schools under subpart A of this part.

(f) *Status.* Any public school to which a student transfers under paragraph (a)(1) of this section must ensure that the student is enrolled in classes and other activities in the school in the same manner as all other students in the school.

(g) *Duration of transfer.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school.

(2) The LEA's obligation to provide transportation for the student may be limited under the circumstances described in paragraph (i) of this section and in § 200.48.

(h) *No eligible schools within an LEA.* If all public schools to which a student may transfer within an LEA are identified for school improvement, corrective action, or restructuring, the LEA—

(1) Must, to the extent practicable, establish a cooperative agreement for a transfer with one or more other LEAs in the area; and

(2) May offer supplemental educational services to eligible students under § 200.45 in schools in their first year of school improvement under § 200.39.

(i) *Transportation.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must, consistent with § 200.48, provide or pay for the student's transportation to the school.

(2) The limitation on funding in § 200.48 applies only to the provision of choice-related transportation, and does not affect in any way the basic obligation to provide an option to transfer as required by paragraph (a) of this section.

(3) The LEA's obligation to provide transportation for the student ends at the end of the school year in which the school from which the student transferred is no longer identified by the LEA for school improvement, corrective action, or restructuring.

(j) *Students with disabilities and students covered under Section 504 of the Rehabilitation Act of 1973 (Section 504).* For students with disabilities under the IDEA and students covered under Section 504, the public school choice option must provide a free appropriate public education as that term is defined in section 602(8) of the IDEA or 34 CFR 104.33, respectively.

(Authority: 20 U.S.C. 6316)

■ 34. Add § 200.45 to read as follows:

**§ 200.45 Supplemental educational services.**

(a) *Definition.* ''Supplemental educational services'' means tutoring and other supplemental academic enrichment services that are—

(1) In addition to instruction provided during the school day;

(2) Specifically designed to—

(i) Increase the academic achievement of eligible students as measured by the State's assessment system; and

(ii) Enable these children to attain proficiency in meeting State academic achievement standards; and

(3) Of high quality and research-based.

(b) *Eligibility.* (1) Only students from low-income families are eligible for supplemental educational services.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(c) *Requirement.* (1) If an LEA identifies a school for a second year of improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34, the LEA must arrange, consistent with paragraph (d) of this section, for each eligible student in the school to receive supplemental educational services from a State-approved provider selected by the student's parents.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the State must ensure that the LEA makes available, consistent with paragraph (d) of this section, supplemental educational services to all eligible students not later than the first day of the 2002–2003 school year.

(3) The LEA must, consistent with § 200.48, continue to make available supplemental educational services to eligible students until the end of the school year in which the LEA is making those services available.

(4)(i) At the request of an LEA, the SEA may waive, in whole or in part, the requirement that the LEA make available supplemental educational services if the SEA determines that—

(A) None of the providers of those services on the list approved by the SEA under § 200.47 makes those services available in the area served by the LEA or within a reasonable distance of that area; and

(B) The LEA provides evidence that it is not otherwise able to make those services available.

(ii) The SEA must notify the LEA, within 30 days of receiving the LEA's request for a waiver under paragraph (c)(4)(i) of this section, whether it approves or disapproves the request and, if it disapproves, the reasons for the disapproval, in writing.

(iii) An LEA that receives a waiver must renew its request for that waiver on an annual basis.

(d) *Priority.* If the amount of funds available for supplemental educational services is insufficient to provide services to each student whose parents request these services, the LEA must give priority to the lowest-achieving students.

(Authority: 20 U.S.C. 6316)

■ 35. Add § 200.46 to read as follows:

**§ 200.46 LEA responsibilities for supplemental educational services.**

(a) If an LEA is required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the LEA must do the following:

(1) Provide the annual notice to parents described in § 200.37(b)(5).

(2) If requested, assist parents in choosing a provider from the list of approved providers maintained by the SEA.

(3) Apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all eligible students whose parents request services consistent with § 200.45.

(4) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(5) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(6) Not disclose to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(b)(1) In addition to meeting the requirements in paragraph (a) of this section, the LEA must enter into an agreement with each provider selected by a parent or parents.

(2) The agreement must—

(i) Require the LEA to develop, in consultation with the parents and the provider, a statement that includes—

(A) Specific achievement goals for the student;

(B) A description of how the student's progress will be measured; and

(C) A timetable for improving achievement;

(ii) Describe procedures for regularly informing the student's parents and teachers of the student's progress;

(iii) Provide for the termination of the agreement if the provider is unable to meet the goals and timetables specified in the agreement;

(iv) Specify how the LEA will pay the provider; and

(v) Prohibit the provider from disclosing to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(3) In the case of a student with disabilities under IDEA or a student covered under Section 504, the provisions of the agreement referred to in paragraph (b)(2)(i) of this section must be consistent with the student's individualized education program under section 614(d) of the IDEA or the student's individualized services under Section 504.

(4) The LEA may not pay the provider for religious worship or instruction.

(c) If State law prohibits an SEA from carrying out one or more of its responsibilities under § 200.47 with respect to those who provide, or seek approval to provide, supplemental educational services, each LEA must carry out those responsibilities with respect to its students who are eligible for those services.

(Authority: 20 U.S.C. 6316(e))

■ 36. Add § 200.47 to read as follows:

**§ 200.47 SEA responsibilities for supplemental educational services.**

(a) If one or more LEAs in a State are required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the SEA for that State must do the following:

(1)(i) In consultation with affected LEAs, parents, teachers, and other interested members of the public, promote participation by as many providers as possible.

(ii) This promotion must include—

(A) Annual notice to potential providers of—

(*1*) The opportunity to provide supplemental educational services; and

(*2*) Procedures for obtaining the SEA's approval to be a provider of those services; and

(B) Posting on the SEA's Web site, for each LEA—

(*1*) The amount equal to 20 percent of the LEA's Title I, Part A allocation available for choice-related transportation and supplemental educational services, as required in § 200.48(a)(2); and

(*2*) The per-child amount for supplemental educational services calculated under § 200.48(c)(1).

(2) Consistent with paragraph (b) of this section, develop and apply to potential providers objective criteria.

(3)(i) Maintain by LEA an updated list of approved providers, including any technology-based or distance-learning providers, from which parents may select; and

(ii) Indicate on the list those providers that are able to serve students with disabilities or limited English proficient students.

(4) Consistent with paragraph (c) of this section, develop, implement, and publicly report on standards and techniques for—

(i) Monitoring the quality and effectiveness of the services offered by each approved provider;

(ii) Withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental educational services from that provider; and

(iii) Monitoring LEAs' implementation of the supplemental educational services requirements of the Act and this part.

(5) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(6) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(b) *Standards for approving providers.* (1) As used in this section and in § 200.46, ''provider'' means a non-profit entity, a for-profit entity, an LEA, an educational service agency, a public school, including a public charter school, or a private school that—

(i) Has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the State's academic content and student achievement standards described under § 200.1;

(ii) Is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and with the State academic content standards and State student achievement standards described under § 200.1;

(iii) Is financially sound; and

(iv) In the case of—

(A) A public school, has not been identified under § 200.32, § 200.33, or § 200.34; or

(B) An LEA, has not been identified under § 200.50(d) or (e).

(2) In order for the SEA to include a provider on the State list, the provider must agree to—

(i)(A) Provide parents of each student receiving supplemental educational services and the appropriate LEA with information on the progress of the student in increasing achievement; and

(B) This information must be in an understandable and uniform format, including alternative formats upon request, and, to the extent practicable, in a language that the parents can understand;

(ii) Ensure that the instruction the provider gives and the content the provider uses—

(A) Are consistent with the instruction provided and the content used by the LEA and the SEA;

(B) Are aligned with State academic content and student academic achievement standards;

(C) Are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children; and

(D) Are secular, neutral, and nonideological; and

(iii) Meet all applicable Federal, State, and local health, safety, and civil rights laws.

(3) In approving a provider, the SEA must consider, at a minimum—

(i) Information from the provider on whether the provider has been removed from any State's approved provider list;

(ii) Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement; and

(iii) Evaluation results, if any, demonstrating that the instructional program has improved student achievement.

(4) As a condition of approval, a State may not require a provider to hire only staff who meet the requirements under §§ 200.55 and 200.56.

(c) *Standards for monitoring approved providers.* To monitor the quality and effectiveness of services offered by an approved provider in order to inform the renewal or the withdrawal of approval of the provider—

(1) An SEA must examine, at a minimum, evidence that the provider's instructional program—

(i) Is consistent with the instruction provided and the content used by the LEA and the SEA;

(ii) Addresses students' individual needs as described in students' supplemental educational services plans under § 200.46(b)(2)(i);

(iii) Has contributed to increasing students' academic proficiency; and

(iv) Is aligned with the State's academic content and student academic achievement standards; and

(2) The SEA must also consider information, if any, regarding—

(i) Parent recommendations or results from parent surveys regarding the success of the provider's instructional program in increasing student achievement; and

(ii) Evaluation results demonstrating that the instructional program has improved student achievement.

(Authority: 20 U.S.C. 6316(e))

**§ 200.47 [Amended]**

■ 37. Remove the undesignated center heading ''Local Educational Agency Plans'' following § 200.47.

■ 38. Revise § 200.48 to read as follows:

**§ 200.48 Funding for choice-related transportation and supplemental educational services.**

(a) *Amounts required.* (1) To pay for choice-related transportation and supplemental educational services required under section 1116 of the ESEA, an LEA may use—

(i) Funds allocated under subpart A of this part;

(ii) Funds, where allowable, from other Federal education programs; and

(iii) State, local, or private resources.

(2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part (''20 percent obligation'') to—

(i) Provide, or pay for, transportation of students exercising a choice option under § 200.44;

(ii) Satisfy all requests for supplemental educational services under § 200.45; or

(iii) Pay for both paragraph (a)(2)(i) and (ii) of this section, except that—

(A) The LEA must spend a minimum of an amount equal to 5 percent of its allocation under subpart A of this part on transportation under paragraph (a)(2)(i) of this section and an amount equal to 5 percent of its allocation under subpart A of this part for supplemental educational services under paragraph (a)(2)(ii) of this section, unless lesser amounts are needed to meet the requirements of §§ 200.44 and 200.45;

(B) Except as provided in paragraph (a)(2)(iii)(C) of this section, the LEA may not include costs for administration or transportation incurred in providing supplemental educational services, or administrative costs associated with the provision of public school choice options under § 200.44, in the amounts required under paragraph (a)(2) of this section; and

(C) The LEA may count in the amount the LEA is required to spend under paragraph (a) of this section its costs for outreach and assistance to parents concerning their choice to transfer their child or to request supplemental educational services, up to an amount equal to 0.2 percent of its allocation under subpart 2 of part A of Title I of the Act.

(3) If the amount specified in paragraph (a)(2) of this section is insufficient to pay all choice-related transportation costs, or to meet the demand for supplemental educational services, the LEA may make available any additional needed funds from Federal, State, or local sources.

(4) To assist an LEA that does not have sufficient funds to make available supplemental educational services to all students requesting these services, an SEA may use funds that it reserves under part A of Title I and part A of Title V of the ESEA.

(b) *Cap on school-level reduction.* (1) An LEA may not, in applying paragraph (a) of this section, reduce by more than 15 percent the total amount it makes available under subpart A of this part to a school it has identified for corrective action or restructuring.

(2) [Reserved]

(c) *Per-child funding for supplemental educational services.* For each student receiving supplemental educational services under § 200.45, the LEA must make available the lesser of—

(1) The amount of its allocation under subpart A of this part, divided by the number of students from families below the poverty level, as counted under section 1124(c)(1)(A) of the ESEA; or

(2) The actual costs of the supplemental educational services received by the student.

(d) *Unexpended funds for choice-related transportation and supplemental educational services.* (1)(i) Except as provided in paragraph (d)(2) of this section, if an LEA does not meet its 20 percent obligation in a given school year, the LEA must spend the unexpended amount in the subsequent school year on choice-related transportation costs, supplemental educational services, or parent outreach and assistance (consistent with paragraph (a)(2)(iii)(C) of this section).

(ii) The LEA must spend the unexpended amount under paragraph (d)(1)(i) of this section in addition to the amount it is required to spend to meet its 20 percent obligation in the subsequent school year.

(2) To spend less than the amount needed to meet its 20 percent obligation, an LEA must—

(i) Meet, at a minimum, the following criteria:

(A) Partner, to the extent practicable, with outside groups, such as faith-based organizations, other community-based organizations, and business groups, to help inform eligible students and their families of the opportunities to transfer or to receive supplemental educational services.

(B) Ensure that eligible students and their parents have a genuine opportunity to sign up to transfer or to obtain supplemental educational services, including by—

(*1*) Providing timely, accurate notice as required in §§ 200.36 and 200.37;

(*2*) Ensuring that sign-up forms for supplemental educational services are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the internet, other media, and communications through public agencies serving eligible students and their families; and

(*3*) Providing a minimum of two enrollment ''windows,'' at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting supplemental educational services and selecting a provider.

(C) Ensure that eligible supplemental educational services providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities;

(ii) Maintain records that demonstrate the LEA has met the criteria in paragraph (d)(2)(i) of this section; and

(iii) Notify the SEA that the LEA—

(A) Has met the criteria in paragraph (d)(2)(i) of this section; and

(B) Intends to spend the remainder of its 20 percent obligation on other allowable activities, specifying the amount of that remainder.

(3)(i) Except as provided in paragraph (d)(3)(ii) of this section, an SEA must ensure an LEA's compliance with paragraph (d)(2)(i) of this section through its regular monitoring process.

(ii)(A) In addition to its regular monitoring process, an SEA must review any LEA that—

(*1*) The SEA determines has spent a significant portion of its 20 percent obligation for other activities under paragraph (d)(2)(iii)(B) of this section; and

(*2*) Has been the subject of multiple complaints, supported by credible evidence, regarding implementation of the public school choice or

supplemental educational services requirements; and

(B) The SEA must complete its review by the beginning of the next school year.

(4)(i) If an SEA determines under paragraph (d)(3) of this section that an LEA has failed to meet any of the criteria in paragraph (d)(2)(i) of this section, the LEA must—

(A) Spend an amount equal to the remainder specified in paragraph (d)(2)(iii)(B) of this section in the subsequent school year, in addition to its 20 percent obligation for that year, on choice-related transportation costs, supplemental educational services, or parent outreach and assistance; or

(B) Meet the criteria in paragraph (d)(2)(i) of this section and obtain permission from the SEA before spending less in that subsequent school year than the amount required by paragraph (d)(4)(i)(A) of this section.

(ii) The SEA may not grant permission to the LEA under paragraph (d)(4)(i)(B) of this section unless the SEA has confirmed the LEA's compliance with paragraph (d)(2)(i) of this section for that subsequent school year.

(Authority: 20 U.S.C. 6316)

■ 39. Add § 200.49 to read as follows:

**§ 200.49 SEA responsibilities for school improvement, corrective action, and restructuring.**

(a) *Transition requirements for public school choice and supplemental educational services.* (1) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school provides public school choice in accordance with § 200.44 not later than the first day of the 2002–2003 school year.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school makes available supplemental educational services in accordance with § 200.45 not later than the first day of the 2002–2003 school year.

(b) *State reservation of funds for school improvement.* (1) In accordance with § 200.100(a), an SEA must reserve 2 percent of the amount it receives under this part for fiscal years 2002 and 2003, and 4 percent of the amount it receives under this part for fiscal years 2004 through 2007, to—

(i) Support local school improvement activities;

(ii) Provide technical assistance to schools identified for improvement, corrective action, or restructuring; and

(iii) Provide technical assistance to LEAs that the SEA has identified for improvement or corrective action in accordance with § 200.50.

(2) Of the amount it reserves under paragraph (b)(1) of this section, the SEA must—

(i) Allocate not less than 95 percent directly to LEAs serving schools identified for improvement, corrective action, and restructuring to support improvement activities; or

(ii) With the approval of the LEA, directly provide for these improvement activities or arrange to provide them through such entities as school support teams or educational service agencies.

(3) In providing assistance to LEAs under paragraph (b)(2) of this section, the SEA must give priority to LEAs that—

(i) Serve the lowest-achieving schools;

(ii) Demonstrate the greatest need for this assistance; and

(iii) Demonstrate the strongest commitment to ensuring that this assistance will be used to enable the lowest-achieving schools to meet the progress goals in the school improvement plans under § 200.41.

(c) *Technical assistance.* The SEA must make technical assistance available, through the statewide system of support and improvement required by section 1117 of the ESEA, to schools that LEAs have identified for improvement, corrective action, or restructuring.

(d) *LEA failure.* If the SEA determines that an LEA has failed to carry out its responsibilities with respect to school improvement, corrective action, or restructuring, the SEA must take the actions it determines to be appropriate and in compliance with State law.

(e) *Assessment results.* (1) The SEA must ensure that the results of academic assessments administered as part of the State assessment system in a given school year are available to LEAs before the beginning of the next school year and in such time as to allow for the identification described in § 200.32(a)(2).

(2) The SEA must provide the results described in paragraph (e)(1) of this section to a school before an LEA may identify the school for school improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34.

(f) *Accountability for charter schools.* The accountability provisions under section 1116 of the ESEA must be overseen for charter schools in accordance with State charter school law.

(g) *Factors affecting student achievement.* The SEA must notify the Secretary of Education of major factors that have been brought to the SEA's attention under section 1111(b)(9) of the ESEA that have significantly affected student academic achievement in schools and LEAs identified for improvement within the State.

(Authority: 20 U.S.C. 6311 and 6316)

■ 40. Add § 200.50 to read as follows:

**§ 200.50 SEA review of LEA progress.**

(a) *State review.* (1) An SEA must annually review the progress of each LEA in its State that receives funds under subpart A of this part to determine whether—

(i) The LEA's schools served under this part are making AYP, as defined under §§ 200.13 through 200.20, toward meeting the State's student academic achievement standards; and

(ii) The LEA is carrying out its responsibilities under this part with respect to school improvement, technical assistance, parental involvement, and professional development.

(2) In reviewing the progress of an LEA, the SEA may, in the case of targeted assistance schools served by the LEA, consider the progress only of the students served or eligible for services under this subpart, provided the students selected for services in such schools are those with the greatest need for special assistance, consistent with the requirements of section 1115 of the ESEA.

(b) Rewards. If an LEA has exceeded AYP as defined under §§ 200.13 through 200.20 for two consecutive years, the SEA may—

(1) Reserve funds in accordance with § 200.100(c); and

(2) Make rewards of the kinds described under section 1117 of the ESEA.

(c) *Opportunity for review of LEA-level data.* (1) Before identifying an LEA for improvement or corrective action, the SEA must provide the LEA with an opportunity to review the data, including academic assessment data, on which the SEA has based the proposed identification.

(2)(i) If the LEA believes that the proposed identification is in error for statistical or other substantive reasons, the LEA may provide supporting evidence to the SEA.

(ii) The SEA must consider the evidence before making a final determination not later than 30 days after it has provided the LEA with the opportunity to review the data under paragraph (c)(1) of this section.

(d) *Identification for improvement.* (1)(i) The SEA must identify for

improvement an LEA that, for two consecutive years, including the period immediately before January 8, 2002, fails to make AYP as defined in the SEA's plan under section 1111(b)(2) of the ESEA.

(ii) In identifying LEAs for improvement, an SEA—

(A) May base identification on whether an LEA did not make AYP because it did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for two consecutive years; but

(B) May not limit identification to those LEAs that did not make AYP only because they did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for the same subgroup under § 200.13(b)(7)(ii) for two consecutive years.

(2) The SEA must identify for improvement an LEA that was in improvement status on January 7, 2002.

(3)(i) The SEA may identify an LEA for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA fails to make AYP for a second consecutive year.

(ii) An SEA that does not identify such an LEA for improvement, however, must count the 2001–2002 school year as the first year of not making AYP for the purpose of subsequent identification decisions under paragraph (d)(1) of this section.

(4) The SEA may remove an LEA from improvement status if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA makes AYP for a second consecutive year.

(e) *Identification for corrective action.* After providing technical assistance under § 200.52(b), the SEA—

(1) May take corrective action at any time with respect to an LEA that the SEA has identified for improvement under paragraph (d) of this section;

(2) Must take corrective action—

(i) With respect to an LEA that fails to make AYP, as defined under §§ 200.13 through 200.20, by the end of the second full school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make AYP for a second consecutive year and led to the SEA's identification of the LEA for improvement under paragraph (d) of this section; and

(ii) With respect to an LEA that was in corrective action status on January 7, 2002; and

(3) May remove an LEA from corrective action if, on the basis of assessments administered by the LEA during the 2001–2002 school year, it makes AYP for a second consecutive year.

(f) *Delay of corrective action.* (1) The SEA may delay implementation of corrective action under § 200.53 for a period not to exceed one year if—

(i) The LEA makes AYP for one year; or

(ii) The LEA's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the LEA's financial resources.

(2)(i) The SEA may not take into account the period of delay referred to in paragraph (f)(1) of this section in determining the number of consecutive years the LEA has failed to make AYP; and

(ii) The SEA must subject the LEA to further actions following the period of delay as if the delay never occurred.

(g) *Continuation of public school choice and supplemental educational services.* An SEA must ensure that an LEA identified under paragraph (d) or (e) of this section continues to offer public school choice in accordance with § 200.44 and supplemental educational services in accordance with § 200.45.

(h) *Removal from improvement or corrective action status.* If an LEA makes AYP for two consecutive years following identification for improvement under paragraph (d) or corrective action under paragraph (e) of this section, the SEA need no longer—

(1) Identify the LEA for improvement; or

(2) Subject the LEA to corrective action for the succeeding school year.

(Authority: 20 U.S.C. 6316(c))

■ 41. Add § 200.51 to read as follows:

**§ 200.51 Notice of SEA action.**

(a) *In general.* (1) An SEA must—

(i) Communicate with parents throughout the review of an LEA under § 200.50; and

(ii) Ensure that, regardless of the method or media used, it provides information to parents—

(A) In an understandable and uniform format, including alternative formats upon request; and

(B) To the extent practicable, in a language that parents can understand.

(2) The SEA must provide information to the parents of each student enrolled in a school served by the LEA—

(i) Directly, through such means as regular mail or email, except that if an SEA does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and

(ii) Through broader means of dissemination such as the internet, the media, and public agencies serving the student population and their families.

(3) All communications must respect the privacy of students and their families.

(b) *Results of review.* The SEA must promptly publicize and disseminate to the LEAs, teachers and other staff, the parents of each student enrolled in a school served by the LEA, students, and the community the results of its review under § 200.50, including statistically sound disaggregated results in accordance with §§ 200.2 and 200.7.

(c) *Identification for improvement or corrective action.* If the SEA identifies an LEA for improvement or subjects the LEA to corrective action, the SEA must promptly provide to the parents of each student enrolled in a school served by the LEA—

(1) The reasons for the identification; and

(2) An explanation of how parents can participate in improving the LEA.

(d) *Information about action taken.* (1) The SEA must publish, and disseminate to the parents of each student enrolled in a school served by the LEA and to the public, information on any corrective action the SEA takes under § 200.53.

(2) The SEA must provide this information—

(i) In a uniform and understandable format, including alternative formats upon request; and

(ii) To the extent practicable, in a language that parents can understand.

(3) The SEA must disseminate the information through such means as the internet, the media, and public agencies.

(Authority: 20 U.S.C. 6316(c))

■ 42. Add § 200.52 to read as follows:

**§ 200.52 LEA improvement.**

(a) *Improvement plan.* (1) Not later than 3 months after an SEA has identified an LEA for improvement under § 200.50(d), the LEA must develop or revise an LEA improvement plan.

(2) The LEA must consult with parents, school staff, and others in developing or revising its improvement plan.

(3) The LEA improvement plan must—

(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in core academic subjects in schools served by the LEA;

(ii) Identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the State's student academic achievement standards;

(iii) Address the professional development needs of the instructional

staff serving the LEA by committing to spend for professional development not less than 10 percent of the funds received by the LEA under subpart A of this part for each fiscal year in which the SEA identifies the LEA for improvement. These funds—

(A) May include funds reserved by schools for professional development under § 200.41(c)(5); but

(B) May not include funds reserved for professional development under section 1119 of the ESEA;

(iv) Include specific measurable achievement goals and targets—

(A) For each of the groups of students under § 200.13(b)(7); and

(B) That are consistent with AYP as defined under §§ 200.13 through 200.20;

(v) Address—

(A) The fundamental teaching and learning needs in the schools of the LEA; and

(B) The specific academic problems of low-achieving students, including a determination of why the LEA's previous plan failed to bring about increased student academic achievement;

(vi) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year;

(vii) Specify the responsibilities of the SEA and LEA under the plan, including the technical assistance the SEA must provide under paragraph (b) of this section and the LEA's responsibilities under section 1120A of the ESEA; and

(viii) Include strategies to promote effective parental involvement in the schools served by the LEA.

(4) The LEA must implement the improvement plan—including any revised plan—expeditiously, but not later than the beginning of the school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make AYP for a second consecutive year and led to the SEA's identification of the LEA for improvement under § 200.50(d).

(b) *SEA technical assistance.* (1) An SEA that identifies an LEA for improvement under § 200.50(d) must, if requested, provide or arrange for the provision of technical or other assistance to the LEA, as authorized under section 1117 of the ESEA.

(2) The purpose of the technical assistance is to better enable the LEA to—

(i) Develop and implement its improvement plan; and

(ii) Work with schools needing improvement.

(3) The technical assistance provided by the SEA or an entity authorized by the SEA must—

(i) Be supported by effective methods and instructional strategies grounded in scientifically based research; and

(ii) Address problems, if any, in implementing the parental involvement and professional development activities described in sections 1118 and 1119, respectively, of the ESEA.

(Authority: 20 U.S.C. 6316(c))

■ 43. Add § 200.53 to read as follows:

**§ 200.53 LEA corrective action.**

(a) *Definition.* For the purposes of this section, the term ''corrective action'' means action by an SEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure that caused the SEA to identify an LEA for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the LEA;

(2) Is designed to meet the goal that each group of students described in § 200.13(b)(7) and enrolled in the LEA's schools will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Notice and hearing.* Before implementing any corrective action under paragraph (c) of this section, the SEA must provide notice and a hearing to the affected LEA—if State law provides for this notice and hearing—not later than 45 days following the decision to take corrective action.

(c) *Requirements.* If the SEA identifies an LEA for corrective action, the SEA must do the following:

(1) Continue to make available technical assistance to the LEA.

(2) Take at least one of the following corrective actions:

(i) Defer programmatic funds or reduce administrative funds.

(ii) Institute and fully implement a new curriculum based on State and local content and academic achievement standards, including the provision of appropriate professional development for all relevant staff that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students.

(iii) Replace the LEA personnel who are relevant to the failure to make AYP.

(iv) Remove particular schools from the jurisdiction of the LEA and establish alternative arrangements for public governance and supervision of these schools.

(v) Appoint a receiver or trustee to administer the affairs of the LEA in place of the superintendent and school board.

(vi) Abolish or restructure the LEA.

(vii) In conjunction with at least one other action in paragraph (c)(2) of this section—

(A) Authorize students to transfer from a school operated by the LEA to a higher-performing public school operated by another LEA in accordance with § 200.44, and

(B) Provide to these students transportation, or the costs of transportation, to the other school consistent with § 200.44(h).

(Authority: 20 U.S.C. 6316(c)(10))

**§ 200.54 [Amended]**

■ 44. Revise the undesignated center heading following reserved § 200.54 to read as follows:

**Qualifications of Teachers and Paraprofessionals**

■ 45. Revise § 200.55 to read as follows:

**§ 200.55 Qualifications of teachers.**

(a) *Newly hired teachers in Title I programs.* (1) An LEA must ensure that all teachers hired after the first day of the 2002–2003 school year who teach core academic subjects in a program supported with funds under subpart A of this part are highly qualified as defined in § 200.56.

(2) For the purpose of paragraph (a)(1) of this section, a teacher teaching in a program supported with funds under subpart A of this part is—

(i) A teacher in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A teacher in a schoolwide program school; or

(iii) A teacher employed by an LEA with funds under subpart A of this part to provide services to eligible private school students under § 200.62.

(b) *All teachers of core academic subjects.* (1) Not later than the end of the 2005–2006 school year, each State that receives funds under subpart A of this part, and each LEA in that State, must ensure that all public elementary and secondary school teachers in the State who teach core academic subjects, including teachers employed by an LEA to provide services to eligible private school students under § 200.62, are highly qualified as defined in § 200.56.

(2) A teacher who does not teach a core academic subject—such as some vocational education teachers—is not required to meet the requirements in § 200.56.

(c) *Definition.* The term ''core academic subjects'' means English, reading or language arts, mathematics,

science, foreign languages, civics and government, economics, arts, history, and geography.

(d) *Private school teachers.* The requirements in this section do not apply to teachers hired by private elementary and secondary schools.

(Authority: 20 U.S.C. 6319; 7801(11))

■ 46. Revise § 200.56 to read as follows:

**§ 200.56 Definition of ''highly qualified teacher.''**

A teacher described in § 200.55(a) and (b)(1) is a ''highly qualified teacher'' if the teacher meets the requirements in paragraph (a) and paragraphs (b), (c), or (d) of this section.

(a) *In general.* (1) Except as provided in paragraph (a)(3) of this section, a teacher covered under § 200.55 must—

(i) Have obtained full State certification as a teacher, which may include certification obtained through alternative routes to certification; or

(ii)(A) Have passed the State teacher licensing examination; and

(B) Hold a license to teach in the State.

(2) A teacher meets the requirement in paragraph (a)(1) of this section if the teacher—

(i) Has fulfilled the State's certification and licensure requirements applicable to the years of experience the teacher possesses; or

(ii) Is participating in an alternative route to certification program under which—

(A) The teacher—

(*1*) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(*2*) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(*3*) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(*4*) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(B) The State ensures, through its certification and licensure process, that the provisions in paragraph (a)(2)(ii) of this section are met.

(3) A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in the State's charter school law.

(4) If a teacher has had certification or licensure requirements waived on an emergency, temporary, or provisional basis, the teacher is not highly qualified.

(b) *Teachers new to the profession.* A teacher covered under § 200.55 who is new to the profession also must—

(1) Hold at least a bachelor's degree; and

(2) At the public elementary school level, demonstrate, by passing a rigorous State test (which may consist of passing a State certification or licensing test), subject knowledge and teaching skills in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum; or

(3) At the public middle and high school levels, demonstrate a high level of competency by—

(i) Passing a rigorous State test in each academic subject in which the teacher teaches (which may consist of passing a State certification or licensing test in each of these subjects); or

(ii) Successfully completing in each academic subject in which the teacher teaches—

(A) An undergraduate major;

(B) A graduate degree;

(C) Coursework equivalent to an undergraduate major; or

(D) Advanced certification or credentialing.

(c) *Teachers not new to the profession.* A teacher covered under § 200.55 who is not new to the profession also must—

(1) Hold at least a bachelor's degree; and

(2)(i) Meet the applicable requirements in paragraph (b)(2) or (3) of this section; or

(ii) Based on a high, objective, uniform State standard of evaluation in accordance with section 9101(23)(C)(ii) of the ESEA, demonstrate competency in each academic subject in which the teacher teaches.

(d) A special education teacher is a ''highly qualified teacher'' under the Act if the teacher meets the requirements for a ''highly qualified special education teacher'' in 34 CFR 300.18.

(Authority: 20 U.S.C. 1401(10); 7801(23))

■ 47. Revise § 200.57 to read as follows:

**§ 200.57 Plans to increase teacher quality.**

(a) *State plan.* (1) A State that receives funds under subpart A of this part must develop, as part of its State plan under section 1111 of the ESEA, a plan to ensure that all public elementary and secondary school teachers in the State who teach core academic subjects are highly qualified not later than the end of the 2005–2006 school year.

(2) The State's plan must—

(i) Establish annual measurable objectives for each LEA and school that include, at a minimum, an annual increase in the percentage of—

(A) Highly qualified teachers at each LEA and school; and

(B) Teachers who are receiving high-quality professional development to enable them to become highly qualified and effective classroom teachers;

(ii) Describe the strategies the State will use to—

(A) Help LEAs and schools meet the requirements in paragraph (a)(1) of this section; and

(B) Monitor the progress of LEAs and schools in meeting these requirements; and

(iii) Until the SEA fully complies with paragraph (a)(1) of this section, describe the specific steps the SEA will take to—

(A) Ensure that Title I schools provide instruction by highly qualified teachers, including steps that the SEA will take to ensure that minority children and children from low-income families are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers; and

(B) Evaluate and publicly report the progress of the SEA with respect to these steps.

(3) The State's plan may include other measures that the State determines are appropriate to increase teacher qualifications.

(b) *Local plan.* An LEA that receives funds under subpart A of this part must develop, as part of its local plan under section 1112 of the ESEA, a plan to ensure that—

(1) All public elementary and secondary school teachers in the LEA who teach core academic subjects, including teachers employed by the LEA to provide services to eligible private school students under § 200.62, are highly qualified not later than the end of the 2005–2006 school year; and

(2) Through incentives for voluntary transfers, professional development, recruitment programs, or other effective strategies, minority students and students from low-income families are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers.

(Authority: 20 U.S.C. 6311(b)(8)(C), 6312(c)(1)(I), (L); 6319(a)(2)–(3); 7801(34))

■ 48. Revise § 200.58 to read as follows:

**§ 200.58 Qualifications of paraprofessionals.**

(a) *Applicability.* (1) An LEA must ensure that each paraprofessional who is hired by the LEA and who works in a program supported with funds under subpart A of this part meets the requirements in paragraph (b) of this section and, except as provided in paragraph (e) of this section, the requirements in either paragraph (c) or (d) of this section.

(2) For the purpose of this section, the term ''paraprofessional''—

(i) Means an individual who provides instructional support consistent with § 200.59; and

(ii) Does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties).

(3) For the purpose of paragraph (a) of this section, a paraprofessional working in ''a program supported with funds under subpart A of this part'' is—

(i) A paraprofessional in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A paraprofessional in a schoolwide program school; or

(iii) A paraprofessional employed by an LEA with funds under subpart A of this part to provide instructional support to a public school teacher covered under § 200.55 who provides equitable services to eligible private school students under § 200.62.

(b) *All paraprofessionals.* A paraprofessional covered under paragraph (a) of this section, regardless of the paraprofessional's hiring date, must have earned a secondary school diploma or its recognized equivalent.

(c) *New paraprofessionals.* A paraprofessional covered under paragraph (a) of this section who is hired after January 8, 2002 must have—

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate's or higher degree; or

(3)(i) Met a rigorous standard of quality, and can demonstrate—through a formal State or local academic assessment—knowledge of, and the ability to assist in instructing, as appropriate—

(A) Reading/language arts, writing, and mathematics; or

(B) Reading readiness, writing readiness, and mathematics readiness.

(ii) A secondary school diploma or its recognized equivalent is necessary, but not sufficient, to meet the requirement in paragraph (c)(3)(i) of this section.

(d) *Existing paraprofessionals.* Each paraprofessional who was hired on or before January 8, 2002 must meet the requirements in paragraph (c) of this section no later than January 8, 2006.

(e) *Exceptions.* A paraprofessional does not need to meet the requirements in paragraph (c) or (d) of this section if the paraprofessional—

(1)(i) Is proficient in English and a language other than English; and

(ii) Acts as a translator to enhance the participation of limited English proficient children under subpart A of this part; or

(2) Has instructional-support duties that consist solely of conducting parental involvement activities.

(Authority: 20 U.S.C. 6319(c)–(f))

■ 49. Revise § 200.59 to read as follows:

**§ 200.59 Duties of paraprofessionals.**

(a) A paraprofessional covered under § 200.58 may not be assigned a duty inconsistent with paragraph (b) of this section.

(b) A paraprofessional covered under § 200.58 may perform the following instructional support duties:

(1) One-on-one tutoring for eligible students if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher.

(2) Assisting in classroom management.

(3) Assisting in computer instruction.

(4) Conducting parent involvement activities.

(5) Providing instructional support in a library or media center.

(6) Acting as a translator.

(7) Providing instructional support services.

(c)(1) A paraprofessional may not provide instructional support to a student unless the paraprofessional is working under the direct supervision of a teacher who meets the requirements in § 200.56.

(2) A paraprofessional works under the direct supervision of a teacher if—

(i) The teacher plans the instructional activities that the paraprofessional carries out;

(ii) The teacher evaluates the achievement of the students with whom the paraprofessional is working; and

(iii) The paraprofessional works in close and frequent physical proximity to the teacher.

(d) A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under subpart A of this part—including non-instructional duties and duties that do not benefit participating students—if the amount of time the paraprofessional spends on those duties is the same proportion of total work time as the time spent by similar personnel at the same school.

(Authority: 20 U.S.C. 6319(g))

■ 50. Revise § 200.60 to read as follows:

**§ 200.60 Expenditures for professional development.**

(a)(1) Except as provided in paragraph (a)(2) of this section, an LEA must use funds it receives under subpart A of this part as follows for professional development activities to ensure that teachers and paraprofessionals meet the requirements of §§ 200.56 and 200.58:

(i) For each of fiscal years 2002 and 2003, the LEA must use not less than 5 percent or more than 10 percent of the funds it receives under subpart A of this part.

(ii) For each fiscal year after 2003, the LEA must use not less than 5 percent of the funds it receives under subpart A of this part.

(2) An LEA is not required to spend the amount required in paragraph (a)(1) of this section for a given fiscal year if a lesser amount is sufficient to ensure that the LEA's teachers and paraprofessionals meet the requirements in §§ 200.56 and 200.58, respectively.

(b) The LEA may use additional funds under subpart A of this part to support ongoing training and professional development, as defined in section 9101(34) of the ESEA, to assist teachers and paraprofessionals in carrying out activities under subpart A of this part.

(Authority: 20 U.S.C. 6319(h), (l); 7801(34))

■ 51. Add § 200.61 to read as follows:

**§ 200.61 Parents' right to know.**

(a) At the beginning of each school year, an LEA that receives funds under subpart A of this part must notify the parents of each student attending a Title I school that the parents may request, and the LEA will provide the parents on request, information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

(1) Whether the teacher has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

(2) Whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived.

(3) The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.

(4) Whether the child is provided services by paraprofessionals and, if so, their qualifications.

(b) A school that participates under subpart A of this part must provide to each parent—

(1) Information on the level of achievement of the parent's child in each of the State academic assessments required under § 200.2;

(2) Timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by, a teacher of a core academic subject who is not highly qualified.

(c) An LEA and school must provide the notice and information required under this section—

(1) In a uniform and understandable format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

**§ 200.61 [Amended]**

■ 52. Add an undesignated center heading ''Participation of Eligible Children in Private Schools'' following § 200.61.

(Authority: 20 U.S.C. 6311(h)(6))

■ 53. Add § 200.62 to read as follows:

**§ 200.62 Responsibilities for providing services to private school children.**

(a) After timely and meaningful consultation with appropriate officials of private schools, an LEA must—

(1) In accordance with §§ 200.62 through 200.67 and section 1120 of the ESEA, provide special educational services or other benefits under subpart A of this part, on an equitable basis and in a timely manner, to eligible children who are enrolled in private elementary and secondary schools; and

(2) Ensure that teachers and families of participating private school children participate on a basis equitable to the participation of teachers and families of public school children receiving these services in accordance with § 200.65.

(b)(1) Eligible private school children are children who—

(i) Reside in participating public school attendance areas of the LEA, regardless of whether the private school they attend is located in the LEA; and

(ii) Meet the criteria in section 1115(b) of the ESEA.

(2) Among the eligible private school children, the LEA must select children to participate, consistent with § 200.64.

(c) The services and other benefits an LEA provides under this section must be secular, neutral and nonideological.

**§ 200.62 [Amended]**

■ 54. Remove the undesignated center heading ''Allocations to LEAs'' following § 200.62.

(Authority: 20 U.S.C. 6315(b); 6320(a))

■ 55. Revise § 200.63 to read as follows:

**§ 200.63 Consultation.**

(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA's program for eligible private school children.

(b) At a minimum, the LEA must consult on the following:

(1) How the LEA will identify the needs of eligible private school children.

(2) What services the LEA will offer to eligible private school children.

(3) How and when the LEA will make decisions about the delivery of services.

(4) How, where, and by whom the LEA will provide services to eligible private school children.

(5) How the LEA will assess academically the services to eligible private school children in accordance with § 200.10, and how the LEA will use the results of that assessment to improve Title I services.

(6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and, consistent with § 200.64, the proportion of funds that the LEA will allocate for these services.

(7) The method or sources of data that the LEA will use under § 200.78 to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data if a survey is used.

(8) The equitable services the LEA will provide to teachers and families of participating private school children.

(c)(1) Consultation by the LEA must—

(i) Include meetings of the LEA and appropriate officials of the private schools; and

(ii) Occur before the LEA makes any decision that affects the opportunity of eligible private school children to participate in Title I programs.

(2) The LEA must meet with officials of the private schools throughout the implementation and assessment of the Title I services.

(d)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the LEA can use to provide equitable services to eligible private school children; and

(ii) A thorough consideration and analysis of the views of the officials of the private schools on the provision of services through a contract with a third-party provider.

(2) If the LEA disagrees with the views of the officials of the private schools on the provision of services through a contract, the LEA must provide in writing to the officials of the private schools the reasons why the LEA chooses not to use a contractor.

(e)(1) The LEA must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

(2) If the officials of the private schools do not provide the affirmations within a reasonable period of time, the LEA must submit to the SEA documentation that the required consultation occurred.

(f) An official of a private school has the right to complain to the SEA that the LEA did not—

(1) Engage in timely and meaningful consultation; or

(2) Consider the views of the official of the private school.

(Authority: 20 U.S.C. 6320(b))

■ 56. Revise § 200.64 to read as follows:

**§ 200.64 Factors for determining equitable participation of private school children.**

(a) *Equal expenditures.* (1) Funds expended by an LEA under subpart A of this part for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under paragraph (a)(2) of this section.

(2) An LEA must meet this requirement as follows:

(i)(A) If the LEA reserves funds under § 200.77 to provide instructional and related activities for public elementary or secondary school students at the district level, the LEA must also provide from those funds, as applicable, equitable services to eligible private school children.

(B) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

(ii) The LEA must reserve the funds generated by private school children under § 200.78 and, in consultation with appropriate officials of the private schools, may—

(A) Combine those amounts, along with funds under paragraph (a)(2)(i) of this section, if appropriate, to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or

(B) Provide equitable services to eligible children in each private school with the funds generated by children from low-income families under § 200.78 who attend that private school.

(b) *Services on an equitable basis.* (1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits that the LEA provides to public school children participating under subpart A of this part.

(2) Services are equitable if the LEA—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

(ii) Meets the equal expenditure requirements under paragraph (a) of section; and

(iii) Provides private school children with an opportunity to participate that—

(A) Is equitable to the opportunity provided to public school children; and

(B) Provides reasonable promise of the private school children achieving the high levels called for by the State's student academic achievement standards or equivalent standards applicable to the private school children.

(3)(i) The LEA may provide services to eligible private school children either directly or through arrangements with another LEA or a third-party provider.

(ii) If the LEA contracts with a third-party provider—

(A) The provider must be independent of the private school and of any religious organization; and

(B) The contract must be under the control and supervision of the LEA.

(4) After timely and meaningful consultation under § 200.63, the LEA must make the final decisions with respect to the services it will provide to eligible private school children.

(Authority: 20 U.S.C. 6320)

■ 57. Revise § 200.65 to read as follows:

**§ 200.65 Determining equitable participation of teachers and families of participating private school children.**

(a)(1) From applicable funds reserved for parent involvement and professional development under § 200.77, an LEA shall ensure that teachers and families of participating private school children participate on an equitable basis in professional development and parent involvement activities, respectively.

(2) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

(b) After consultation with appropriate officials of the private schools, the LEA must conduct professional development and parent involvement activities for the teachers and families of participating private school children either—

(1) In conjunction with the LEA's professional development and parent involvement activities; or

(2) Independently.

(c) Private school teachers are not covered by the requirements in § 200.56.

(Authority: 20 U.S.C. 6320(a))

■ 58. Revise § 200.66 to read as follows:

**§ 200.66 Requirements to ensure that funds do not benefit a private school.**

(a) An LEA must use funds under subpart A of this part to provide services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children.

(b)(1) The LEA must use funds under subpart A of this part to meet the special educational needs of participating private school children.

(2) The LEA may not use funds under subpart A of this part for—

(i) The needs of the private school; or

(ii) The general needs of children in the private school.

(Authority: 20 U.S.C. 6320(a), 6321(b))

■ 59. Revise § 200.67 to read as follows:

**§ 200.67 Requirements concerning property, equipment, and supplies for the benefit of private school children.**

(a) The LEA must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under subpart A of this part for the benefit of eligible private school children.

(b) The LEA may place equipment and supplies in a private school for the period of time needed for the program.

(c) The LEA must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Title I purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The LEA must remove equipment and supplies from a private school if—

(1) The LEA no longer needs the equipment and supplies to provide Title I services; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes.

(e) The LEA may not use funds under subpart A of this part for repairs, minor remodeling, or construction of private school facilities.

**§ 200.68 [Removed and Reserved]**

■ 60. Remove and reserve § 200.68.

**§ 200.69 [Amended]**

■ 61. Revise the undesignated center heading following reserved § 200.69 to read as follows:

**Allocations to LEAs**

■ 62. Revise § 200.70 to read as follows:

**§ 200.70 Allocation of funds to LEAs in general.**

(a) The Secretary allocates basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas of the LEA (hereinafter referred to as the ''Census list'').

(b) In establishing eligibility and allocating funds under paragraph (a) of this section, the Secretary counts children ages 5 to 17, inclusive (hereinafter referred to as ''formula children'')—

(1) From families below the poverty level based on the most recent satisfactory data available from the Bureau of the Census;

(2) From families above the poverty level receiving assistance under the Temporary Assistance for Needy Families program under Title IV of the Social Security Act;

(3) Being supported in foster homes with public funds; and

(4) Residing in local institutions for neglected children.

(c) Except as provided in §§ 200.72, 200.75, and 200.100, an SEA may not change the Secretary's allocation to any LEA that serves an area with a total census population of at least 20,000 persons.

(d) In accordance with § 200.74, an SEA may use an alternative method, approved by the Secretary, to distribute the State's share of basic grants, concentration grants, targeted grants, and education finance incentive grants to LEAs that serve an area with a total census population of less than 20,000 persons.

(Authority: 20 U.S.C. 6333–6337)

■ 63. Revise § 200.71 to read as follows:

**§ 200.71 LEA eligibility.**

(a) *Basic grants.* An LEA is eligible for a basic grant if the number of formula children is—

(1) At least 10; and

(2) Greater than two percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Concentration grants.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph (a) of this section; and

(2) The number of formula children exceeds—

(i) 6,500; or

(ii) 15 percent of the LEA's total population ages 5 to 17 years, inclusive.

(c) *Targeted grants.* An LEA is eligible for a targeted grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(d) *Education finance incentive grants.* An LEA is eligible for an education finance incentive grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(Authority: 20 U.S.C. 6333–6337)

**§ 200.71 [Amended]**

■ 64. Remove the undesignated center heading ''Fiscal Requirements'' following § 200.71.

■ 65. Add § 200.72 to read as follows:

**§ 200.72 Procedures for adjusting allocations determined by the Secretary to account for eligible LEAs not on the Census list.**

(a) *General.* For each LEA not on the Census list (hereinafter referred to as a ''new'' LEA), an SEA must determine the number of formula children and the number of children ages 5 to 17, inclusive, in that LEA.

(b) *Determining LEA eligibility.* An SEA must determine basic grant, concentration grant, targeted grant, and education finance incentive grant eligibility for each new LEA and re-determine eligibility for the LEAs on the Census list, as appropriate, based on the number of formula children and children ages 5 to 17, inclusive, determined in paragraph (a) of this section.

(c) *Adjusting LEA allocations.* An SEA must adjust the LEA allocations calculated by the Secretary to determine allocations for eligible new LEAs based on the number of formula children determined in paragraph (a) of this section.

(Authority: 20 U.S.C. 6333–6337)

■ 66. Revise § 200.73 to read as follows:

**§ 200.73 Applicable hold-harmless provisions.**

(a) *General.* (1) Except as authorized under paragraph (c) of this section and § 200.100(d)(2), an SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under paragraph (a)(4) of this section.

(2) The hold-harmless protection limits the maximum reduction of an LEA's allocation compared to the LEA's allocation for the preceding year.

(3) Except as provided in § 200.100(d), an SEA must apply the hold-harmless requirement separately for basic grants, concentration grants, targeted grants, and education finance incentive grants as described in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the ESEA, the hold-harmless percentage varies based on the LEA's proportion of formula children, as shown in the following table:

| LEA's number of formula children ages 5 to 17, inclusive, as a percentage of its total population of children ages 5 to 17, inclusive | Hold-harmless percentage | Applicable grant formulas |
|---|---|---|
| (i) 30% or more | 95 | Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants. |
| (ii) 15% or more but less than 30% | 90 | |
| (iii) Less than 15% | 85 | |

(b) *Targeted grants and education finance incentive grants.* The number of formula children used to determine the hold-harmless percentage is the number before applying the weights described in section 1125 and section 1125A of the ESEA.

(c) *Adjustment for insufficient funds.* If the amounts made available to the State are insufficient to pay the full amount that each LEA is eligible to receive under paragraph (a)(4) of this section, the SEA must ratably reduce the allocations for all LEAs in the State to the amount available.

(d) *Eligibility for hold-harmless protection.* (1) An LEA must meet the eligibility requirements for a basic grant, targeted grant, or education finance incentive grant under § 200.71 in order for the applicable hold-harmless provision to apply.

(2) An LEA not meeting the eligibility requirements for a concentration grant under § 200.71 must be paid its hold-harmless amount for four consecutive years.

(Authority: 20 U.S.C. 6332(c))

■ 67. Add § 200.74 to read as follows:

**§ 200.74 Use of an alternative method to distribute grants to LEAs with fewer than 20,000 residents.**

(a) For eligible LEAs serving an area with a total census population of less than 20,000 persons (hereinafter referred to as ''small LEAs''), an SEA may apply to the Secretary to use an alternative method to distribute basic grant, concentration grant, targeted grant, and education finance incentive grant funds.

(b) In its application, the SEA must—

(1) Identify the alternative data it proposes to use; and

(2) Assure that it has established a procedure through which a small LEA that is dissatisfied with the determination of its grant may appeal directly to the Secretary.

(c) The SEA must base its alternative method on population data that best reflect the current distribution of children from low-income families among the State's small LEAs and use the same poverty measure consistently for small LEAs across the State for all Title I, part A programs.

(d) Based on the alternative poverty data selected, the SEA must—

(1) Re-determine eligibility of its small LEAs for basic grants, concentration grants, targeted grants, and education finance incentive grants in accordance with § 200.71;

(2) Calculate allocations for small LEAs in accordance with the provisions of sections 1124, 1124A, 1125, and 1125A of the ESEA, as applicable; and

(3) Ensure that each LEA receives the hold-harmless amount to which it is entitled under § 200.73.

(e) The amount of funds available for redistribution under each formula is the separate amount determined by the Secretary under sections 1124, 1124A, 1125, and 1125A of the ESEA for eligible small LEAs after the SEA has made the adjustments required under § 200.72(c).

(f) If the amount available for redistribution to small LEAs under an alternative method is not sufficient to satisfy applicable hold-harmless requirements, the SEA must ratably reduce all eligible small LEAs to the amount available.

(Authority: 20 U.S.C. 6333–6337)

■ 68. Add § 200.75 to read as follows:

**§ 200.75 Special procedures for allocating concentration grant funds in small States.**

(a) In a State in which the number of formula children is less than 0.25 percent of the national total on January 8, 2002 (hereinafter referred to as a ''small State''), an SEA may either—

(1) Allocate concentration grants among eligible LEAs in the State in accordance with §§ 200.72 through 200.74, as applicable; or

(2) Without regard to the allocations determined by the Secretary—

(i) Identify those LEAs in which the number or percentage of formula children exceeds the statewide average number or percentage of those children; and

(ii) Allocate concentration grant funds, consistent with § 200.73, among the LEAs identified in paragraph (a)(2)(i) of this section based on the number of formula children in each of those LEAs.

(b) If the SEA in a small State uses an alternative method under § 200.74, the SEA must use the poverty data approved under the alternative method to identify those LEAs with numbers or percentages of formula children that exceed the statewide average number or percentage of those children for the State as a whole.

(Authority: 20 U.S.C. 6334(b))

■ 69. Add § 200.77 to read as follows:

**§ 200.77 Reservation of funds by an LEA.**

Before allocating funds in accordance with § 200.78, an LEA must reserve funds as are reasonable and necessary to—

(a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve—

(1) Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live;

(2) Children in local institutions for neglected children; and

(3) If appropriate—

(i) Children in local institutions for delinquent children; and

(ii) Neglected and delinquent children in community-day school programs;

(b) Provide, where appropriate under section 1113(c)(4) of the ESEA, financial incentives and rewards to teachers who serve students in Title I schools identified for school improvement, corrective action, and restructuring for the purpose of attracting and retaining qualified and effective teachers;

(c) Meet the requirements for choice-related transportation and supplemental educational services in § 200.48, unless the LEA meets these requirements with non-Title I funds;

(d) Address the professional development needs of instructional staff, including—

(1) Professional development requirements under § 200.52(a)(3)(iii) if the LEA has been identified for improvement or corrective action; and

(2) Professional development expenditure requirements under § 200.60;

(e) Meet the requirements for parental involvement in section 1118(a)(3) of the ESEA;

(f) Administer programs for public and private school children under this part, including special capital expenses, if any, incurred in providing services to eligible private school children, such as—

(1) The purchase and lease of real and personal property (including mobile educational units and neutral sites);

(2) Insurance and maintenance costs;

(3) Transportation; and

(4) Other comparable goods and services, including non-instructional computer technicians; and

(g) Conduct other authorized activities, such as school improvement and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3) and (4), 6316(b)(10), (c)(7)(iii), 6318(a)(3), 6319(l), 6320, 7279d)

■ 70. Add § 200.78 to read as follows:

**§ 200.78 Allocation of funds to school attendance areas and schools.**

(a)(1) An LEA must allocate funds under subpart A of this part to school attendance areas and schools, identified as eligible and selected to participate under section 1113(a) or (b) of the ESEA, in rank order on the basis of the total number of children from low-income families in each area or school.

(2)(i) In calculating the total number of children from low-income families, the LEA must include children from low-income families who attend private schools.

(ii) To obtain a count of private school children, the LEA may—

(A) Use the same poverty data the LEA uses to count public school children;

(B)(*1*) Use comparable poverty data from a survey of families of private school students that, to the extent possible, protects the families' identity; and

(*2*) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable;

(C) Use comparable poverty data from a different source, such as scholarship applications;

(D) Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or

(E) Use an equated measure of low income correlated with the measure of low income used to count public school children.

(iii) An LEA may count private school children from low-income families every year or every two years.

(iv) After timely and meaningful consultation in accordance with § 200.63, the LEA shall have the final authority in determining the method used to calculate the number of private school children from low-income families;

(3) If an LEA ranks its school attendance areas and schools by grade span groupings, the LEA may determine the percentage of children from low-income families in the LEA as a whole or for each grade span grouping.

(b)(1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA must allocate to each participating school attendance area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under part A, subpart 2 of Title I. The LEA must calculate this per-pupil amount before it reserves funds under § 200.77, using the poverty measure selected by the LEA under section 1113(a)(5) of the ESEA.

(2) If an LEA is serving only school attendance areas or schools in which the percentage of children from low-income families is 35 percent or more, the LEA is not required to allocate a per-pupil amount of at least 125 percent.

(c) An LEA is not required to allocate the same per-pupil amount to each participating school attendance area or school provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

(d) An LEA may reduce the amount of funds allocated under this section to a school attendance area or school if the area or school is spending supplemental State or local funds for programs that meet the requirements in § 200.79(b).

(e) If an LEA contains two or more counties in their entirety, the LEA must distribute to schools within each county a share of the LEA's total grant that is no less than the county's share of the child count used to calculate the LEA's grant.

**§ 200.78 [Amended]**

■ 71. Add an undesignated center heading ''Fiscal Requirements'' following § 200.78.

■ 72. Add § 200.79 to read as follows:

**§ 200.79 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.**

(a) For the purpose of determining compliance with the supplement not supplant requirement in section 1120A(b) and the comparability requirement in section 1120A(c) of the ESEA, a grantee or subgrantee under subpart A of this part may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging academic achievement standards that all students are expected to meet;

(iii) Is designed to meet the educational needs of all students in the school, particularly the needs of students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards; and

(iv) Uses the State's assessment system under § 200.2 to review the effectiveness of the program; or

(2)(i) Serves only students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards;

(ii) Provides supplementary services designed to meet the special educational needs of the students who are participating in the program to support their achievement toward meeting the State's student academic achievement standards; and

(iii) Uses the State's assessment system under § 200.2 to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under section 1113(b)(1)(D) and 1113(c)(2)(B) of the ESEA.

(Authority: 20 U.S.C. 6321(b)–(d))

## PART 299—GENERAL PROVISIONS

■ 73. The authority citation for part 299 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e–3(a)(1), 6511(a), and 7373(b), unless otherwise noted.

■ 74. In § 299.1 revise paragraph (a) to read as follows:

**§ 299.1 What are the purpose and scope of these regulations?**

(a) This part establishes uniform administrative rules for programs in titles I through XIII of the Elementary and Secondary Education Act of 1965, as amended (ESEA). As indicated in particular sections of this part, certain provisions apply only to a specific group of programs.

* * * * *

## Subpart G—[Removed]

■ 75. Remove subpart G.

[FR Doc. 2017–12126 Filed 7–6–17; 8:45 am]

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**Federal Register**

Vol. 82, No. 129

Friday, July 7, 2017

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## FEDERAL REGISTER PAGES AND DATE, JULY

30721–30946 ..... 3
30947–31240 ..... 5
31241–31428 ..... 6
31429–31714 ..... 7

## CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Executive Orders:**
12675 (Superseded by EO 13803)
13803 ..... 31429
**Administrative Orders:**
Memorandums:
Memorandum of June 29, 2017 ..... 31237
Memorandum of June 29, 2017 ..... 31239

**7 CFR**

205 ..... 31241
956 ..... 31244

**9 CFR**

557 ..... 30721

**10 CFR**

72 ..... 31433
1703 ..... 30722
**Proposed Rules:**
72 ..... 31512

**12 CFR**

1024 ..... 30947
1026 ..... 30947
1101 ..... 30724
**Proposed Rules:**
704 ..... 30774
930 ..... 30776
932 ..... 30776
1277 ..... 30776
1282 ..... 31009, 31514

**14 CFR**

13 ..... 31440
39 ..... 30949, 30953, 30955, 30958, 30961, 31245, 31250
71 ..... 30964, 31440
**Proposed Rules:**
23 ..... 30798
33 ..... 30800
39 ..... 30802, 31535
71 ..... 31030, 31031, 31033, 31034
73 ..... 30805

**15 CFR**

742 ..... 31442
744 ..... 31442
772 ..... 31442
774 ..... 31442

**16 CFR**

1 ..... 30966
**Proposed Rules:**
1245 ..... 31035

**19 CFR**

**Proposed Rules:**
101 ..... 30807

**21 CFR**

1 ..... 30730
11 ..... 30730
73 ..... 30731
101 ..... 30730

**29 CFR**

1910 ..... 31252
**Proposed Rules:**
2509 ..... 31278
2510 ..... 31278
2550 ..... 31278

**31 CFR**

**Proposed Rules:**
1010 ..... 31537

**32 CFR**

706 ..... 30967

**33 CFR**

100 ..... 31449
117 ..... 30735, 30736, 30968, 31253, 31254, 31255
165 ..... 30736, 30739, 30741, 30743, 30745, 30969, 30971, 30973, 31255, 31257, 31260, 31450, 31452, 31454, 31455
**Proposed Rules:**
Ch. I ..... 31545
117 ..... 31036

**34 CFR**

200 ..... 31690
299 ..... 31690
668 ..... 30975

**40 CFR**

52 ..... 30747, 30749, 30758, 30767, 30770, 30976, 31457, 31458, 31462, 31464
81 ..... 30976
180 ..... 30979, 30982, 30987, 30990, 30993, 31468, 31471
300 ..... 31263
441 ..... 30997
770 ..... 31267
**Proposed Rules:**
52 ..... 30809, 30812, 30814, 30815, 31546, 31547
300 ..... 31281

**42 CFR**

431 ..... 31158
457 ..... 31158
**Proposed Rules:**
413 ..... 31190
414 ..... 31190

**43 CFR**

8360 ..... 31268

**46 CFR**

**Proposed Rules:**
Ch. I ..... 31545
Ch. III ..... 31545

**47 CFR**

90 ..... 31270

**Proposed Rules:**
1 ..... 31282
32 ..... 31282
65 ..... 31282

**49 CFR**

269 ..... 31476
1152 ..... 30997
1300 ..... 31271

**Proposed Rules:**
Ch. IV ..... 31545

**50 CFR**

622 ..... 31489
648 ..... 31491
660 ..... 31494

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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