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The Code of Federal Regulations is sold by the Superintendent of Documents.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

RIN 3245–AG52

Record Disclosure and Privacy

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is issuing this direct final rule to amend its regulations for disclosure and production of information under the Freedom of Information Act (FOIA). This rule updates and streamlines the language of several procedural provisions and incorporates changes brought about by amendments to the FOIA under the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016.

DATES: This rule is effective January 3, 2018 without further action, unless adverse comment is received by November 6, 2017. If adverse comment is received, the U.S. Small Business Administration will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Identify your comments by RIN 3245–AG52 and submit them by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov,* follow the Web site instructions for submitting comments.
- *Mail or Hand Deliver/Courier:* Oreoluwa Fashola, Freedom of Information/Privacy Acts (FOI/PA) Office, 409 Third Street SW., Mail Code 2441, Washington, DC 20416.

Please be aware that SBA will only accept comments for this direct final rule on *http://www.regulations.gov,* which will be posted publicly.

If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to the Chief, Freedom of Information/Privacy Acts (FOI/PA) Office, 409 Third Street SW., Mail Code 2441, Washington, DC 20416, or send an email to *foia@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should withhold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Oreoluwa Fashola, Freedom of Information/Privacy Acts (FOI/PA) Office, at 202–401–8203 or *foia@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA is issuing this direct final rule to amend its regulations for disclosure and production of information under the Freedom of Information Act, 5 U.S.C. 552 (FOIA). This direct final rule updates and streamlines the language of several procedural provisions and incorporates certain changes brought about by amendments to the FOIA under the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), Public Law 110–175 (2007), and the OPEN FOIA Act of 2009, Public Law 111–83 (2009), which have been incorporated into agency practice but not reflected in the regulations, and the FOIA Improvement Act of 2016, Public Law 114–185 (2016). The FOIA Improvement Act of 2016 provides, among other things, that agencies must allow a minimum of 90 days for requesters to file an administrative appeal. The Act also requires that agencies notify requesters of the availability of dispute resolution services at various times throughout the FOIA process. This rule updates the Agency's regulations in 13 CFR part 102, subpart A to reflect those statutory changes.

Section-by-Section Analysis

Section 102.1 (General provisions) is revised to remove outdated wording and to incorporate additional policies and procedures relevant to the FOIA process. SBA is also amending this section to more clearly define a component. Component is defined in § 102.1(b) as each separate bureau, office, division, district office, regional office, area office service center, loan processing center or central office duty station within the SBA that is responsible for processing FOIA requests. A full list of the types of records maintained by different SBA components is provided in Appendix A of this rule. This section is being revised to include the current definition of a record under the FOIA. Section 9 of the OPEN Government Act amended the definitions section of the FOIA, 5 U.S.C. 552(f), by including within the definition of ''record'' any information ''maintained for an agency by an entity under Government contract, for the purposes of records management.'' This amendment makes clear that records, in the possession of Government contractors for purposes of records management, are considered agency records for purposes of the FOIA. Through this change to the regulations, SBA adopts the statutory definition of ''record.''

Section 102.2 (Proactive disclosure of records) is revised to more clearly reflect the FOIA Improvement Act of 2016's requirement that records the FOIA requires agencies to make available for public inspection must be in an electronic format, rather than simply made available for public inspection and copying. Such records are available via the internet through the electronic reading rooms of each component. For those individuals with no access to the internet, the SBA FOI/PA Office or the component Public Liaison can provide assistance with access to records available in the electronic reading rooms.

Section 102.3 (Requirements pertaining to the submission of requests) is revised to explain that the requester will receive the quickest response if the request is directed to the component that maintains the records. This section also provides that requesters may discuss their requests with the component's FOIA Contact or the FOIA Public Liaison in advance of making a request, as well as to clarify a request already made. New paragraph (b), which describes the process under which SBA may administratively close a request if a requester fails to comply with a request for additional information.

Section 102.4 (Responsibility for responding to requests) is revised to advise requesters of who may grant or deny requests, re-routing of misdirected requests, and of the need to consult,

refer, or coordinate with another component and/or agency.

Section 102.5 (Timing of responses to requests) formerly § 102.4 is revised to include a requirement that components notify requesters of the availability of assistance from the Office of Government Information Services (OGIS) at the National Archives and Records Administration when the component gives notice to requesters that the request involves unusual circumstances. This notification is required by the FOIA Improvement Act of 2016.

Section 102.6 (Responses to requests) is revised to include requirements that components notify requesters of the availability of assistance from a FOIA Public Liaison and OGIS when providing requesters with responses to their requests. These notifications are required by the FOIA Improvement Act of 2016.

Section 102.7 (Confidential commercial information) is revised to update the language of the current definitions and provide a more detailed description for SBA processes for notification to a submitter of business information.

Section 102.8 (Fees) is revised to identify the different types of requester fee categories and clarify some of the definitions used by SBA in determining a requester's fee category. For instance, ''Commercial use request,'' would clarify that components will make determinations on commercial use on a case-by-case basis. Also this section is revised to conform to recent decisions of the D.C. Circuit Court of Appeals addressing two FOIA fee categories: ''representative of the news media'' and ''educational institution.'' See *Cause of Action* v. *FTC,* 799 F.3d 1108 (D.C. Cir. 2015); *Sack* v. *DOD,* 823 F.3d 687 (D.C. Cir. 2016). The Agency's existing FOIA regulations state that a representative of the news media is any person or entity that is organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In *Cause of Action,* 799 F.3d at 1125, the court held that a representative of the news media need not work for an entity that is ''organized and operated'' to publish or broadcast news. Therefore, the definition of ''representative of the news media'' is revised to remove the ''organized and operated'' requirement. The definition of ''educational institution'' is revised to reflect the holding in *Sack,* 823 F.3d at 688 that students who make FOIA requests in furtherance of their coursework or other school-sponsored activities may qualify under this requester category. Several examples are being added to help requesters understand the analysis that SBA will apply to determine whether a requester meets the criteria to be considered an educational institution.

Paragraph (d) ''Charging fees,'' changes the current fee schedule that SBA uses for search and review which is currently at a rate of $30 per hour, to $46 per hour for professional staff (GS–9 to GS–14) and $83 per hour for managerial staff (GS–15 and above) to be consistent with other Federal Agency costs. Because these and similar changes are consistent with current regulations and describe current processes, SBA does not expect that they will result in significant additional costs for the government or the public. Paragraph (d)(1)(iii), which discusses direct costs associated with conducting any search that requires the creation of a new computer program. This change is intended to improve comprehension and to more accurately describe the circumstances under which a requester may be charged for a computerized search or a search of electronic records. It does not represent a change in practice, as SBA currently charges direct costs for specialized data searches.

Paragraph (e) addresses restrictions on charging fees when the FOIA's time limits are not met and is revised to reflect changes made to those restrictions by the FOIA Improvement Act of 2016. Specifically, these changes reflect that agencies may not charge search fees (or duplication fees for representatives of the news media and educational/non-commercial scientific institution requesters) when the agency fails to comply with the FOIA's time limits. The restriction on charging fees is excused and the agency may charge fees as usual when it satisfies one of three exceptions detailed at 5 U.S.C. 552(a)(4)(A)(viii)(II).

This rule also revises paragraph (l), which addresses the requirements for a waiver or reduction of fees, to specify that requesters may seek a waiver of fees and to streamline and simplify the description of the factors to be considered by components when making fee waiver determinations. These updates do not substantively change the analysis, but instead present the factors in a way that is clearer to both components and requesters. Rather than six factors, the amended section provides for three overall factors. Specifically, a requester should be granted a fee waiver if the requested information (1) sheds light on the activities and operations of the government; (2) is likely to contribute significantly to public understanding of those operations and activities; and (3) is not primarily in the commercial interest of the requester. This streamlined description facilitates easier understanding and application of the statutory standard.

Again, because these changes are consistent with current regulations and case law which describe current processes, SBA does not expect that they will result in significant additional costs for the government or the public. Finally, this section is amended to include a chart showing fee applicability, for ease of reference.

Section 102.9 (Administrative appeals) is revised to extend the time to file an administrative appeal to 90 days, in conformity with the 90-day minimum time period established by the FOIA Improvement Act of 2016. This section is also revised to include a new paragraph regarding engaging in dispute resolution services provided by OGIS.

Section 102.10 (Preservation of records) outlines SBA responsibilities maintaining records responsive to FOIA requests in accordance with 44 U.S.C. or the General Records Schedule 14 of the National Archives and Records Administration.

102.11 (Subpoenas), formerly at 102.10, the text of this section remains the same as before.

Appendix A is added to list the type of records that SBA typically releases or withholds.

SBA is issuing this direct final rule to amend its procedures for disclosure and production of information under the Freedom of Information Act (5 U.S.C. 552) (FOIA), which are in 13 CFR part 102, subpart A.

Since these are conforming amendments, with no extraneous interpretation or other expanded materials, SBA expects no significant adverse comments. Based on that fact, SBA has decided to proceed with a direct final rule giving the public 30 days to comment. If SBA receives a significant adverse comment during the comment period, SBA will withdraw the rule, and proceed with a new rule.

Compliance With Executive Orders 12866, 12988, 13132, 13563, 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under

Executive Order 12866. This direct final rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this direct final rule will not have any 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. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this direct final rule has no federalism implications warranting the preparation of a federalism assessment.

Executive Order 13563

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

Executive Order 13771

This rule is not an Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their action on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have significant economic impact on a substantial number of small entities. However, section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis, if the rulemaking is not expected to have a significant impact on a substantial number of small entities. SBA has determined that this direct final rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by SBA are nominal. Within the meaning of RFA, SBA certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 102

Freedom of information, Privacy.

Accordingly, for the reasons set forth in the preamble, the U.S. Small Business Administration is amending 13 CFR part 102 as follows:

PART 102—[AMENDED]

■ 1. The authority citation for part 102 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 31 U.S.C. 3717, 9701; 44 U.S.C. 3501.

■ 2. Subpart A is revised to read as follows:

Subpart A—Disclosure of Information

Sec.

102.1 General provisions.
102.2 Proactive disclosure of records.
102.3 Requirements pertaining to the submission of requests.
102.4 Responsibility for responding to requests.
102.5 Timing of responses to requests.
102.6 Responses to requests.
102.7 Confidential commercial information.
102.8 Fees.
102.9 Administrative appeals.
102.10 Preservation of records.
102.11 Subpoenas.
Appendix A to Subpart A—Records Maintained by SBA

Subpart A—Disclosure of Information

§ 102.1 General provisions.

(a) This subpart contains the rules that SBA follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. The rules in this subpart should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Guidelines''). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart B of this part as well as under this subpart.

(b) As referenced in this subpart, ''component'' means each separate bureau, office, division, district office, regional office, area office, service center, loan processing center or central office duty location within the SBA that is responsible for processing FOIA requests. See appendix A to this subpart for a list of information generally exempt from disclosure. For contact information for each office visit *https://www.sba.gov/foia* and for a detailed description of the function of each office to help ascertain the types of records maintained by each component, please visit *https://www.sba.gov/about-sba.* The rules described in this regulation that apply to SBA also apply to its components.

(c) The SBA has a decentralized system for processing requests, with each component handling requests for its records.

(d) The term record means:

(1) Any information that would be an agency record subject to the requirements of this section when maintained by SBA in any format, including written or electronic format; and

(2) Any information described under paragraph (d)(1) of this section that is maintained for SBA by an entity under Government contract, for purposes of records management.

§ 102.2 Proactive disclosure of records.

Records that are required by the FOIA to be made available for public inspection in an electronic format may be accessed through the SBA's Web site at *https://www.sba.gov/foia.* Each component of SBA is responsible for determining which of its records are required to be made publicly available, as well as for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component shall ensure that its Web site of posted records and indices is reviewed and updated on an ongoing basis. Each component has a FOIA Public Liaison who can assist individuals in locating records

particular to a component. A list of the SBA's FOIA Public Liaisons is available at *https://www.sba.gov/foia.*

§ 102.3 Requirements pertaining to the submission of requests.

(a) *General information.* (1) The SBA has a decentralized system for responding to FOIA requests, with each component handling requests for its records. All components have the capability to receive requests electronically either through email or a web portal. To make a request for records, a requester should write directly to the Freedom of Information/Privacy Acts (FOI/PA) Office by mail to 409 3rd St SW., Washington, DC 20416 or submit a fax to 202–205–7059 or email to *foia@sba.gov.* Requesters may also submit their request through the FOIA online portal at *https://foiaonline.regulations.gov/foia/action/public/home.* Additional information for submitting a request to SBA is listed at *https://www.sba.gov/foia.* However, a request will receive the quickest possible response if it is addressed to the component that maintains the records sought.

(2) A requester who is making a request for records about himself or herself must comply with the verification of identity provision set forth in subpart B of this part. The Certification of Identity form, available at *http://www.justice.gov/oip/forms/cert_ind.pdf,* may be used by individuals who are making requests for records pertaining to themselves.

(3) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, each component can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable agency personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may help the component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, reference number, the timeframe for which the records are sought, the office that created the records, or any other information that will assist the component in locating documents responsive to the request. Before submitting their requests, requesters may contact the component's FOIA Contact or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records. If, after receiving a request, a component determines that the request does not adequately describe the records sought, the component will inform the requester what additional information is needed or why the request is otherwise insufficient. The component will also notify the requester that it will not be able to comply with their request unless the additional information it has requested is received from them in writing within 20 working days after the component has requested it. If this type of notification is received, a requester may wish to discuss it with the FOIA Public Liaison. If the component does not receive a written response containing the additional information within 20 working days after it has been requested, the SBA will presume that the requester is no longer interested in the records and will close the file on the request. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA Contact or its FOIA Public Liaison, or a representative of the FOI/PA Office, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the SBA's response to the request may be delayed.

(c) *Form or format.* Requests may specify the preferred form or format (including electronic formats) for the records sought. The SBA will accommodate the request if the record is readily reproducible in that form or format.

(d) *Contact information.* Requesters must provide contact information, such as their phone number, email address, and mailing address, to assist the SBA in communicating with the requester and providing the released records.

§ 102.4 Responsibility for responding to requests.

(a) *In general.* Except in the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request.

(b) *Authority to grant or deny requests.* The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) *Re-routing of misdirected requests.* Where a component determines that a request was misdirected within the SBA, the receiving component shall route the request to the proper component(s).

(d) *Consultation, referral, and coordination.* When reviewing records located by a component in response to a request, the component shall determine whether another component of SBA or another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the component shall proceed in one of the following ways:

(1) *Consultation.* When records originated with the component processing the request, but contain within them information of interest to another component, agency, or other Federal Government office, the component processing the request should typically consult with that other component or agency prior to making a release determination.

(2) *Referral.* (i) When the component processing the request believes that a different component, agency, or other Federal Government office is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record, as long as the referral is to a component or agency that is subject to the FOIA. Ordinarily, the component or agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the component processing the request and the originating component or agency jointly agrees that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever a component refers any part of the responsibility for responding to a request to another component or agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the component or agency to

which the record was referred, including that component's or agency's FOIA Contact information.

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

(e) *Classified information.* On receipt of any request involving classified information, the component shall determine whether the information is currently and properly classified and take appropriate action to ensure compliance. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or that should consider the information for classification. Whenever a component's record contains information that has been derivatively classified (for example, when it contains information classified by another component or agency), the component shall refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

(f) *Agreements regarding consultations and referrals.* Components of SBA may establish agreements with other components of SBA or other Federal agencies to eliminate the need for consultations or referrals with respect to particular types of records.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals received by the SBA will be handled according to the date that the FOIA request initially was received by the first component or agency.

§ 102.5 Timing of responses to requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. In instances involving misdirected requests that are re-routed pursuant to § 102.4(c), the response time will commence on the date that the request is received by the proper component's office that is designated to receive requests, but in any event not later than 10 working days after the request is first received by any component's office that is designated by these regulations to receive requests.

(b) *Multitrack processing.* All components will designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors that may be considered are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. Components shall advise requesters of the track into which their request falls and, when appropriate, should offer the requester an opportunity to narrow or modify the request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the component extends the time limit on that basis, the component shall, before expiration of the 20-working day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the component estimates processing of the request will be completed. Where the extension exceeds 10 working days, the component shall, as prescribed by the FOIA, provide the requester with an opportunity to modify the request or to arrange an alternative time period for processing the original or modified request. The component shall make available its designated FOIA Contact or its FOIA Public Liaison for this purpose. The component must also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(d) *Aggregating requests.* For the purposes of determining unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components shall not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A request for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i) through (iii) of this section must be submitted to the component that maintains the records requested. When making a request for expedited processing of an administrative appeal, the request should be submitted to the FOI/PA Office. Requests for expedited processing that are based on paragraph (e)(1)(iv) of this section must be submitted to the component processing the request. A component that receives a misdirected request for expedited processing under the standard set forth in paragraph (e)(1)(iv) of this section shall forward it immediately to the FOI/PA Office for its determination. The time period for making the determination on the request for expedited processing under paragraph (e)(1)(iv) of this section shall commence

on the date that the FOI/PA Office receives the request, provided that it is routed within 10 working days.

(3) A requester who seeks expedited processing must submit a notarized statement, such as an affidavit or declaration, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, the SBA may waive the formal certification requirement.

(4) A component shall notify the requester within 10 working days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request must be given priority, placed in the processing track for expedited requests, and must be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 102.6 Responses to requests.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the Internet using electronic means, such as email or web portal.

(b) *Acknowledgments of requests.* A component shall acknowledge the request in writing and assign it an individualized tracking number. Components shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Estimated dates of completion and interim responses.* Upon request, components shall provide an estimated date by which they expect to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the SBA or component may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once a component determines it will grant a request in full or in part, it will notify the requester in writing. The component shall inform the requester of any fees charged under § 102.8 and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The component must inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(e) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include denials involving fees or fee waiver matters, denials of requests for expedited processing, and decisions where:

(1) The requested record is exempt, in whole or in part;

(2) The request does not reasonably describe the records sought;

(3) The information requested is not a record subject to the FOIA;

(4) The requested record does not exist, cannot be located, or has been destroyed; or

(5) The requested record is not readily reproducible in the form or format sought by the requester.

(f) *Content of denial.* The denial must be signed by the head of the component or designee and must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request;

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

(4) A statement that the denial may be appealed under § 102.9, and a description of the appeal requirements; and

(5) A statement notifying the requester of the assistance available from the component's FOIA Public Liaison or designee, and the dispute resolution services offered by OGIS.

(g) *Markings on released documents.* Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption.

§ 102.7 Confidential commercial information.

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

Confidential commercial information means commercial or financial information obtained by the SBA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

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

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the component determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

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

(1) The component determines that the information is exempt under the FOIA;

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

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

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the component shall give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) A component shall specify a reasonable time period within which the submitter must respond to the notice referenced above. If the submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as the basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the component after the date of any disclosure decision shall not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

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

(g) *Notice of intent to disclose.* Whenever a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

§ 102.8 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. Components shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. A component ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Small Business Administration, addressed to the component assessing the fee.

(b) *Categories of requesters.* Different fees are assessed depending on the requester category. Requesters may seek a fee waiver. Requests for fee waivers will be considered in accordance with the requirements in paragraph (l) of this section. For purposes of assessing fees, the FOIA establishes four categories of requesters:

(1) Commercial use requesters;

(2) Non-commercial scientific/educational institutions requesters;

(3) News media requesters, and;

(4) All other requesters.

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

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. A component's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that the SBA incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility. This will be in addition to search, review, and duplication fees, and shall be paid by requesters categorized as commercial and other.

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

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. Components may seek verification from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

Example 1 to paragraph (c)(4). A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2 to paragraph (c)(4). A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3 to paragraph (c)(4). A student, who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (c)(1) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available

through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, a requester's past publication record will be considered in making a determination.

(7) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 102.7, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

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

(d) *Charging fees.* In responding to FOIA requests, components will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (l) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, components will not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (e) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be charged as follows: Professional (GS 9–14)—$46; and managerial (GS 15 and above)—$83.

(iii) Requesters shall be charged the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by SBA at a Federal Records Center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees will be assessed to all requesters, subject to the restrictions of paragraph (e) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it can be readily reproduced in the form or format requested. Where photocopies are supplied, SBA will provide one copy per request at the cost of $.10 per page. For copies of records produced on tapes, disks, or other media, SBA will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. For other forms of duplication, components shall charge the direct costs.

(3) *Review.* (i) Review fees will be assessed to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with SBA's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (d)(1)(ii) of this section.

(ii) The following table summarizes the fees for each type of requester.

TABLE 1 TO § 102.8—SUMMARY OF FEES

Requester category	Search	Review	Duplication fees	Direct costs
Commercial Use	Yes	Yes	Yes	Yes.
Educational/Noncommercial Scientific Institutions.	No	No	Yes (first 100 pages, or equivalent volume free).	No.
News Media	No	No	Yes (first 100 pages, or equivalent volume free).	No.
All Others	Yes (first 2 hours free)	No	Yes (first 100 pages, or equivalent volume free).	Yes.

(e) *Restrictions on charging fees.* (1) When a component determines that a requester is an educational institution, non-commercial scientific institution, or representative of the news media, and the records are not sought for commercial use, it will not charge search fees.

(i) If a component fails to comply with the time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (c)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(1)(ii) through (iv) of this section.

(ii) If a component has determined that unusual circumstances as defined by the FOIA apply and SBA provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be

excused for an additional 10 working days.

(iii) If a component has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the component may charge search fees, or, in the case of requesters described in paragraph (c)(1) of this section, may charge duplication fees, if the following steps are taken. The component shall provide a timely written notice of unusual circumstances to the requester in accordance with the FOIA and SBA must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the component may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(2) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(4) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than $46.00.

(f) *Notice of anticipated fees in excess of $46.00.* (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed $46.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. If the request is not for noncommercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of $46.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) Components shall make available their FOIA Public Liaison or other designee to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(g) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(h) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components shall aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(j) *Advance payments.* (1) For requests other than those described in paragraphs (j)(2) or (j)(3) of this section, components cannot require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. Components may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or SBA within 30 working days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the component may require that the requester make an advance payment of the full amount of any anticipated fee before SBA begins to process a new request or continues to process a pending request or any pending appeal. When a component has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which advanced payment is required, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance

payment within 30 working days after the date of the fee determination, the request will be closed.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires SBA to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the requester will be informed of the contact information for that program.

(l) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting written correspondence demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (d) of this section, where a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) Components shall furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (l)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. Components shall presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the following criteria will be considered:

(A) Identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, a determination will be made whether the primary interest is furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (l)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. Ordinarily there will be a presumption, that when a news media requester has satisfied factors (l)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver must be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

§ 102.9 Administrative appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to the FOI/PA Office. The contact information is contained in § 102.3(a)(1). Examples of adverse determinations are provided in § 102.6(e). The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 working days after the date of the response. The appeal should clearly identify the component's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* (1) The Chief, FOI/PA or designee will act on behalf of the SBA on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the FOI/PA Office shall take appropriate action to ensure compliance with Executive Orders 13467 and 13526.

(c) *Decisions on appeals.* A decision on an appeal will be made in writing. A decision that upholds a component's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation. If a component's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The component will thereafter, further process the request in accordance with that appeal determination and respond directly to the requester.

(d) Time limit for issuing appeal decision. The statutory time limit for responding to appeals is generally 20 working days after receipt. However, the Appeals Officer may extend the time limit for responding to an appeal provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met.

(e) *Engaging in dispute resolution services provided by OGIS.* Mediation is a voluntary process. If a component agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(f) *When an appeal is required.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 102.10 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 102.11 Subpoenas.

(a) The person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will seek approval for compliance from the Associate General Counsel for Litigation. Except where the subpoena requires the testimony of an employee of the Inspector General's office, or records within the possession of the Inspector General, the Associate General Counsel may delegate the authorization for appropriate production of documents or testimony to local SBA counsel.

(b) If SBA counsel approves compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves compliance with the subpoena, SBA will not comply, and will base such noncompliance on an appropriate legal basis such as privilege or a statute.

(d) SBA counsel must provide a copy of any subpoena relating to a criminal matter to SBA's Inspector General prior to its return date.

Appendix A to Subpart A of Part 102—Records Maintained by SBA

I. Information Generally Exempt From Disclosure

a. Non-statistical information on pending, declined, withdrawn, or canceled applications.

b. Non-statistical information on defaults, delinquencies, losses etc.

c. Loan status, other than charged-off or paid-in-full.

d. Home disaster loan status and interest rate.

e. Financial statements, credit reports, business plans, plant lay-outs, marketing strategy, advertising plans, fiscal projections, pricing information, payroll information, private sector experience and contracts, IRS forms, purchase information, banking information, corporate structure, research plans and client list of applicant/recipient.

f. Portions of: Certificate of Competency records, Requests for Size Determinations, 8(a) Business Development Plans, loan applications, SBIC applications, loan officer's reports.

g. Internal documents not incorporated into final Agency action, pending internal recommendations on applications for assistance, SBA/attorney-client communications, pending litigation documents and investigatory documents. Discretionary disclosure policy must be utilized.

h. Personal history and financial statements, tax forms, resumes, all non-government career experience, communications regarding applicant's character, home addresses and telephone numbers, social security numbers, birth dates and medical records. Portions of Inspector General (IG) reports, audit reports, program investigation records and any other records which, if released, would interfere with the Government's law enforcement proceedings and/or would reveal the identity of a confidential source and documents relating to pending litigation and investigations. Requests for IG documents must be referred to the Office of the Inspector General, Counsel Division.

i. Financial information on portfolio companies.

j. Information originating from other agencies should be referred to those agencies for disclosure determinations.

II. Information Generally Disclosed

a. Names and business addresses of recipients of approved loans, SBIC licenses, Certificates of Competency, lease guarantees, surety bond guarantees and requests for counseling.

b. Names of officers, directors, stockholders or partners of recipient firms.

c. Kinds and amounts of loans, loan terms, interest rates (except on home disaster loans), maturity dates, general purpose, etc.

d. Statistical data on assistance, loans, defaults, contracts, counseling, etc.

e. Decisions, rulings and records showing final Agency actions in specific factual situations if identifying details exempt from disclosure are first deleted.

f. Awarded contracts: names, amounts, dates, contracting agencies.

g. Identity of participating banks.

h. List of 8(a) participants, date of entry, FPPT dates and NAICS codes.

i. OHA opinions and decisions.

j. Names of SBA employees, grades, titles, and duty stations.

Linda E. McMahon,

Administrator.

[FR Doc. 2017–21204 Filed 10–4–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0034; Product Identifier 2016–NE–32–AD; Amendment 39–19063; AD 2017–20–06]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Honeywell International Inc. (Honeywell) AS907–1–1A turbofan engines. This AD was prompted by reports of loss of power due to failure of the second stage low-pressure turbine (LPT2) blade. This AD requires a one-time inspection of the LPT2 blades and, if the blades fail the inspection, the replacement of the blades with a part eligible for installation. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2017.

ADDRESSES: For service information identified in this final rule, contact Honeywell International Inc., 111 S 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; Internet: *https://myaerospace.honeywell.com/wps/portal.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7125. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0034.

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–2017–0034; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S.

Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Honeywell International Inc. (Honeywell) AS907–1–1A turbofan engines. The NPRM published in the **Federal Register** on June 20, 2017 (82 FR 28028). The NPRM was prompted by reports of loss of power due to failure of the second stage LPT2 blade from high-cycle fatigue in the blade's dovetail region. The NPRM proposed to require a one-time inspection of the LPT2 blades and, if the blades fail the inspection, the replacement of the blades with a part eligible for installation. We are issuing this AD to prevent failure of the LPT2 blades, failure of one or more engines, and loss of the airplane.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

We reviewed Honeywell Service Bulletin (SB) AS907–72–9067, Revision 1, dated March 20, 2017. This SB describes procedures for inspecting the LPT2 blades. 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.

Other Related Service Information

We reviewed Honeywell SB AS907–72–9067, Revision 0, dated December 12, 2016, which also describes procedures for inspecting the LPT2 blades. We also reviewed the Honeywell Light Maintenance Manual, AS907–1–1A, 72–00–00, Section 72–05–12, dated May 25, 2016, and Section 72–55–03, dated September 27, 2011, which provide additional guidance for performing borescope inspections.

Costs of Compliance

We estimate that this AD affects 40 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Borescope inspection	10 work-hours × $85 per hour = $850	$0	$850	$34,000
Report results of inspection	1 work-hour × $85 per hour = $85	0	85	3,400

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We estimate that 40 engines will need this replacement.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of the LPT2 blade set	50 work-hours × $85 per hour = $4,250	$50,000	$54,250

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave., SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–20–06 Honeywell International Inc.: Amendment 39–19063; Docket No. FAA–2017–0034; Product Identifier 2016–NE–32–AD.

(a) Effective Date

This AD is effective November 9, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Honeywell International Inc. (Honeywell) AS907–1–1A turbofan engines with second stage low-pressure turbine (LPT2) rotor blades, part number (P/N) 3035602–1, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by reports of loss of power due to failure of the LPT2 blade. We are issuing this AD to prevent failure of the LPT2 blades, failure of one or more engines, and loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) For LPT2 rotor blades, P/N 3035602–1 that have more than 8,000 hours since new on the effective date of this AD, perform a one-time borescope inspection for wear of the Z gap contact area at the blade tip shroud for each of the 62 LPT2 rotor blades within 200 hours time in service after the effective date of this AD.

(2) Use the Accomplishment Instructions, Paragraph 3.B.(1), of Honeywell Service Bulletin (SB) AS907–72–9067, Revision 1, dated March 20, 2017, to do the inspection.

(3) If the measured wear and/or fretting of any Z gap contact area is greater than 0.005 inch, replace the LPT2 rotor assembly with a part eligible for installation before further flight.

(4) Do the following actions within 200 hours time in service after the effective date of this AD:

(i) Using a borescope make a clear digital image of the Z gap contact area at the blade tip shroud of the 62 LPT2 rotor blades.

(ii) Identify the three Z gap contact areas with the greatest amount of wear and/or fretting.

(iii) Record the blade position on the LPT2 rotor assembly and the measured wear of the three Z gap contact areas with the greatest amount of wear and/or fretting.

(iv) Send the results to Honeywell at *engine.reliability@honeywell.com* within 30 days after completing these actions.

(g) Credit for Previous Actions

You may take credit for the actions required by paragraphs (f)(1) and (4) of this AD, if you performed these actions before the effective date of this AD using Honeywell SB AS907–72–9067, Revision 0, dated December 12, 2016.

(h) Paperwork Reduction Act Burden Statement

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

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, may approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Los Angeles ACO Branch, send it to the attention of the person identified in paragraph (j) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Honeywell Service Bulletin AS907–72–9067, Revision 1, dated March 20, 2017.

(ii) Reserved.

(3) For Honeywell service information identified in this AD, contact Honeywell International Inc., 111 S 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; Internet: *https://myaerospace.honeywell.com/wps/portal.*

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on September 22, 2017.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2017–21285 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9183; Product Identifier 2016–NM–059–AD; Amendment 39–19029; AD 2017–18–20]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for The Boeing Company Model 707 airplanes equipped with a main cargo door (MCD). This AD was prompted by analysis of the cam support assemblies of the MCD that indicated the repetitive high frequency eddy current (HFEC) inspections required by the existing maintenance program are not adequate to detect cracks before two adjacent cam support assemblies of the MCD could fail. This AD requires repetitive ultrasonic inspections for cracking of the cam support assemblies of the MCD, and replacement if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9183.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9183; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chandra Ramdoss, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5239; fax: 562–627–5210; email: *chandraduth.ramdoss@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 707 airplanes. The NPRM published in the **Federal Register** on October 4, 2016 (81 FR 68376) (''the NPRM''). The NPRM was prompted by analysis of the cam support assemblies of the MCD that indicated the repetitive HFEC inspections required by the existing maintenance program are not adequate to detect cracks before two adjacent cam support assemblies of the MCD could fail. The NPRM proposed to require repetitive ultrasonic inspections for cracking of the cam support assemblies of the MCD, and replacement if necessary. We are issuing this AD to detect and correct cracking of the cam support assemblies of the MCD. Such cracking could result in reduced structural integrity of the MCD and consequent rapid decompression of the airplane.

Comments

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

Request To Revise Applicability

Boeing stated that Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016, affects only Boeing factory and Boeing-converted freighters, but the proposed AD extends the applicability to all Model 707 airplanes, including the ones that have been converted by non-Boeing supplemental type certificates (STCs).

We infer the commenter is requesting that the actions of the service information only be required for Model 707 airplanes identified in the Effectivity paragraph of Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016. We agree that the applicability of the proposed AD should not include Model 707 airplanes that do not have an MCD. However, we disagree that the AD applicability should be limited to the airplanes identified in the Effectivity paragraph of Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016, which only identifies Boeing factory and Boeing-converted freighters. The cam support assemblies having the affected part number could be installed at original aircraft manufacture, or during passenger-to-freighter modification. We expect that the actions specified in Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016, can be accomplished on airplanes that are not identified in that service information. However, if an operator with a Model 707 freighter that is not a part of Boeing type design cannot accomplish the required actions in the service information, or prefers to use different service information that is specific to their design, approval of an alternative method of compliance (AMOC) can be requested in accordance with paragraph (j) of this AD. We revised this AD to limit the applicability to Model 707 airplanes equipped with an MCD.

Request To Supersede AD 80–08–10 R1, Amendment 39–3830 (45 FR 46343, July 10, 1980) (''AD 80–08–10 R1'')

Boeing requested that we revise the NPRM to supersede AD 80–08–10 R1. Boeing stated that AD 80–08–10 R1 mandates HFEC inspections of MCD cam support assemblies having part numbers (P/Ns) 69–23588–1 and 69–23588–2, as specified in Boeing Service Bulletin 707–A3387. Boeing explained that the NPRM is adding cam support assemblies having P/Ns 69–23588–1 and 69–23588–2 to the list in Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016. Boeing asserted that the addition of these components to the list of affected parts would mean that the operators have to perform HFEC inspections of cam support assemblies having P/Ns 69–23588–1 and 69–23588–2, as specified in AD 80–08–10 R1, and perform ultrasonic inspections of the same components, as specified in the proposed AD. Boeing explained that

cracking initiates at the bottom of the lubrication hole on the inside of the cam support fitting lug and is not visible until it breaks to the surface of the lug. The subsurface detection capability of the ultrasonic inspection provides a more reliable inspection.

We partially agree with Boeing's request to supersede the inspections which are still required per AD 80–08–10 Rl. These inspections will overlap with the newly mandated repetitive inspections. We disagree with the request to revise this AD to supersede AD 80–08–10 Rl. Instead, we have added language to paragraph (i) of this AD to state that accomplishing the initial inspection and all applicable replacements required by paragraph (h) of this AD on an airplane terminates the requirements of AD 80–08–10 R1, for that airplane only.

Request To Revise Compliance Time

Boeing requested that we revise the compliance time in paragraph (g)(l) of the proposed AD from ''before the accumulation of 18,000 total flight cycles'' to ''before the accumulation of 18,000 door flight cycles, or within 10 years after the utilization of MCD cam support assemblies, whichever occurs first. If the door flight cycles are not known, use total airplane flight cycles.'' Boeing explained that this change would provide relief for the operators that use converted freighters by delaying the required inspection for the MCDs that have been in service less than 18,000 total door flight cycles, but are installed on the airplanes that have more than 18,000 total airframe flight cycles. Boeing also stated that the 10-year time limit is included in Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016, to address the low utilization rate of Model 707/720 airplanes.

We agree with Boeing's request. For the airplanes that have been converted to freighters, the compliance time for the initial inspection should be based on the number of cycles the MCD cam support assembly has been in service. We have revised paragraph (g)(l) of this AD accordingly. In addition, we have revised paragraph (h) of this AD to refer to the compliance times specified in paragraphs (g)(1) and (g)(2) of this AD instead of referring to Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016. We have also removed the exception to the service information that was in paragraph (i) of the proposed AD.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016. The service information describes procedures for an ultrasonic inspection of the cam support assemblies of the MCD for cracking, and replacement if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD will affect 12 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	6 work-hours × $85 per hour = $510 per inspection cycle.	$0	$510 per inspection cycle	$22,950 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	60 work-hours × $85 per hour = $5,100	$14,107	$19,207

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–18–20 The Boeing Company: Amendment 39–19029; Docket No. FAA–2016–9183; Product Identifier 2016–NM–059–AD.

(a) Effective Date

This AD is effective November 9, 2017.

(b) Affected ADs

This AD affects AD 80–08–10 R1, Amendment 39–3830 (45 FR 46343, July 10, 1980).

(c) Applicability

This AD applies to The Boeing Company Model 707–100 Long Body, –200, –100B Long Body, and –100B Short Body series airplanes; and Model 707–300, –300B, –300C, and –400 series airplanes; certificated in any category; equipped with a main cargo door (MCD).

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by analysis of the cam support assemblies of the MCD that indicated the repetitive high frequency eddy current (HFEC) inspections required by the existing maintenance program are not adequate to detect cracks before two adjacent cam support assemblies of the MCD could fail. We are issuing this AD to detect and correct cracking of the cam support assemblies of the MCD. Such cracking could result in reduced structural integrity of the MCD and consequent rapid decompression of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection to Determine Part Numbers

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Inspect the cam support assemblies of the MCD to determine whether part number (P/N) 69–23588–1, 69–23588–2, 69–23588–5, 69–23588–6, 69–23588–9, or 69–23588–10 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number(s) of the cam support assemblies of the MCD can be conclusively determined from that review.

(1) Before the accumulation of 18,000 total flight cycles since installation of the door, or before the accumulation of 10 years on the MCD cam support assemblies, whichever occurs first. If the number of flight cycles since installation of the door are not known, use total airplane flight cycles.

(2) Within 1,790 flight cycles or 24 months after the effective date of this AD, whichever occurs later.

(h) Repetitive Inspections of the Cam Support Assemblies of the MCD and Corrective Actions

If, during any inspection required by paragraph (g) of this AD, any cam support assembly of the MCD having P/N 69–23588–1, 69–23588–2, 69–23588–5, 69–23588–6, 69–23588–9, or 69–23588–10 is determined to be installed: At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, do an ultrasonic inspection to detect cracking of the affected cam support assemblies of the MCD, and do all applicable replacements, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016. Do all applicable replacements before further flight. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016.

(i) Terminating Action for AD 80–08–10 R1, Amendment 39–3830 (45 FR 46343, July 10, 1980)

Accomplishment of the initial inspection and all applicable replacements on an airplane, as required by paragraph (h) of this AD, terminates all the requirements of AD 80–08–10 R1, Amendment 39–3830 (45 FR 46343, July 10, 1980), for that airplane only.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Chandra Ramdoss, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5239; fax: 562–627–5210; email: *chandraduth.ramdoss@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing 707 Alert Service Bulletin A3542, dated February 12, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600;

telephone 562–797–1717; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 31, 2017.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–19041 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31154; Amdt. No. 3765]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 5, 2017. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 2017.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION:

This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on September 8, 2017.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instruction Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 12 October 2017

Deadhorse, AK, Deadhorse, ILS OR LOC RWY 6, Amdt 3
Deadhorse, AK, Deadhorse, RNAV (GPS) Z RWY 6, Amdt 2
Deadhorse, AK, Deadhorse, RNAV (GPS) Z RWY 24, Amdt 2
Deadhorse, AK, Deadhorse, Takeoff Minimums and Obstacle DP, Amdt 3A
Deadhorse, AK, Deadhorse, VOR RWY 5, Amdt 4A, CANCELED
Deadhorse, AK, Deadhorse, VOR RWY 6, Amdt 3
Deadhorse, AK, Deadhorse, VOR Y RWY 24, Amdt 6B
Deadhorse, AK, Deadhorse, VOR Z RWY 24, Amdt 5
Mena, AR, Mena Intermountain Muni, ILS OR LOC RWY 27, Amdt 1B
Mena, AR, Mena Intermountain Muni, NDB RWY 27, Amdt 1A
Mena, AR, Mena Intermountain Muni, VOR/DME–A, Amdt 10, CANCELED
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 24R, ILS RWY 24R (CAT II), ILS RWY 24R (CAT III), Amdt 26
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 25L, ILS RWY 25L (CAT II), ILS RWY 25L (CAT III), Amdt 14A
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 24R, Amdt 3
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 25L, Amdt 4A
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 24R, Amdt 1A
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 25L, Amdt 2A
Dover/Cheswold, DE, Delaware Airpark, RNAV (GPS) RWY 9, Orig
Dover/Cheswold, DE, Delaware Airpark, RNAV (GPS) RWY 9, Amdt 2A, CANCELED
Dover/Cheswold, DE, Delaware Airpark, RNAV (GPS RWY 27, Orig
Dover/Cheswold, DE, Delaware Airpark, RNAV (GPS) RWY 27, Amdt 1B, CANCELED
Dover/Cheswold, DE, Delaware Airpark, Takeoff Minimums and Obstacle DP, Orig
Dover/Cheswold, DE, Delaware Airpark, Takeoff Minimums and Obstacle DP, Orig, CANCELED
Dover/Cheswold, DE, Delaware Airpark, VOR RWY 27, Orig
Dover/Cheswold, DE, Delaware Airpark, VOR RWY 27, Amdt 6C, CANCELED
Cordele, GA, Crisp County-Cordele, LOC RWY 10, Amdt 1
Iowa City, IA, Iowa City Muni, RNAV (GPS) RWY 30, Orig-B
Mc Call, ID, Mc Call Muni, RNAV (GPS) RWY 16, Amdt 1
Mc Call, ID, Mc Call Muni, RNAV (GPS) RWY 34, Amdt 1
Mc Call, ID, Mc Call Muni, RNAV (GPS) Y RWY 34, Amdt 1, CANCELED
Muncie, IN, Delaware County Rgnl, ILS OR LOC RWY 32, Amdt 9D
Muncie, IN, Delaware County Rgnl, RNAV (GPS) RWY 32, Orig-B
Lawrence, MA, Lawrence Muni, ILS Y OR LOC Y RWY 5, Amdt 5
Lawrence, MA, Lawrence Muni, ILS Z OR LOC Z RWY 5, Amdt 1
Lawrence, MA, Lawrence Muni, RNAV (GPS) RWY 5, Amdt 1
Lawrence, MA, Lawrence Muni, RNAV (GPS) RWY 23, Amdt 1
Lawrence, MA, Lawrence Muni, VOR RWY 23, Amdt 12
Long Prairie, MN, Todd Field, RNAV (GPS) RWY 34, Amdt 2
Laurel, MT, Laurel Muni, RNAV (GPS) RWY 4, Amdt 1B
Laurel, MT, Laurel Muni, RNAV (GPS) RWY 22, Amdt 1B
Garrison, ND, Garrison Muni, RNAV (GPS) RWY 13, Amdt 1A
Garrison, ND, Garrison Muni, RNAV (GPS) RWY 31, Amdt 1A
New Philadelphia, OH, Harry Clever Field, RNAV (GPS) RWY 15, Orig-C
New Philadelphia, OH, Harry Clever Field, VOR–A, Amdt 2A
Altoona, PA, Altoona-Blair County, RNAV (GPS) Y RWY 3, Amdt 1A
Altoona, PA, Altoona-Blair County, RNAV (GPS) Z RWY 3, Orig-B
Selinsgrove, PA, Penn Valley, RNAV (GPS) RWY 17, Amdt 1
Selinsgrove, PA, Penn Valley, RNAV (GPS) RWY 35, Orig
Columbia, SC, Columbia Metropolitan, ILS OR LOC RWY 11, ILS RWY 11 (CAT II), ILS RWY 11 (CAT III), Amdt 15A
Columbia, SC, Columbia Metropolitan, ILS OR LOC RWY 29, Amdt 3I
Columbia, SC, Columbia Metropolitan, VOR–A, Amdt 16A
Bristol/Johnson/Kingsport, TN, Tri-Cities, TRICITIES TWO, Graphic DP
Abingdon, VA, Virginia Highlands, RNAV (GPS) RWY 24, Amdt 2
Melfa, VA, Accomack County, LOC RWY 3, Amdt 1
Melfa, VA, Accomack County, RNAV (GPS) RWY 3, Amdt 2
Melfa, VA, Accomack County, RNAV (GPS) RWY 21, Amdt 1
Melfa, VA, Accomack County, VOR RWY 3, Amdt 2

[FR Doc. 2017–21220 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31155; Amdt. No. 3766]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 5, 2017. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of October 5, 2017.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops—M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on September 8, 2017.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
12–Oct–17	MT	Libby	Libby	7/6820	8/22/17	This NOTAM, published in TL 17–21, is hereby rescinded in its entirety.
12–Oct–17	AK	Central	Central	7/0453	8/29/17	RNAV (GPS) RWY 8, Orig-A.
12–Oct–17	AK	Central	Central	7/0454	8/29/17	RNAV (GPS) RWY 26, Orig-A.
12–Oct–17	AK	Homer	Homer	7/0473	8/29/17	RNAV (GPS) Y RWY 4, Amdt 1B.
12–Oct–17	AK	Homer	Homer	7/0475	8/29/17	LOC/DME RWY 4, Amdt 10A.
12–Oct–17	AK	Koliganek	Koliganek	7/0477	8/29/17	RNAV (GPS) RWY 27, Amdt 1.
12–Oct–17	AK	Kaltag	Kaltag	7/0478	8/29/17	RNAV (GPS) RWY 3, Orig-C.
12–Oct–17	AK	Mountain Village	Mountain Village	7/0479	8/29/17	RNAV (GPS) RWY 20, Amdt 1B.
12–Oct–17	AK	Pilot Point	Pilot Point	7/0480	8/29/17	RNAV (GPS) RWY 25, Orig-B.
12–Oct–17	AK	Pilot Point	Pilot Point	7/0482	8/29/17	RNAV (GPS) RWY 7, Orig-B.
12–Oct–17	AK	Ruby	Ruby	7/0492	8/29/17	RNAV (GPS) RWY 3, Amdt 1A.
12–Oct–17	CA	Bishop	Bishop	7/0499	8/29/17	RNAV (GPS) Y RWY 12, Orig-B.
12–Oct–17	CA	Bishop	Bishop	7/0500	8/29/17	RNAV (GPS) Z RWY 12, Orig-C.
12–Oct–17	CA	Davis	University	7/0503	8/29/17	RNAV (GPS) RWY 17, Orig-B.
12–Oct–17	CA	Bakersfield	Bakersfield Muni	7/0506	8/29/17	RNAV (GPS) RWY 34, Orig-B.
12–Oct–17	CA	San Diego/El Cajon	Gillespie Field	7/0509	8/29/17	RNAV (GPS) RWY 17, Amdt 2D.
12–Oct–17	CO	Meeker	Meeker Coulter Fld ..	7/0513	8/29/17	RNAV (GPS) RWY 3, Amdt 3B.
12–Oct–17	OR	Bend	Bend Muni	7/0515	8/29/17	RNAV (GPS) Y RWY 16, Amdt 2A.
12–Oct–17	OR	Mc Minnville	Mc Minnville Muni	7/0517	8/29/17	RNAV (GPS) RWY 4, Orig-A.
12–Oct–17	OR	Tillamook	Tillamook	7/0519	8/29/17	RNAV (GPS) RWY 13, Orig-B.
12–Oct–17	OK	Goldsby	David Jay Perry	7/1922	8/14/17	VOR/DME RWY 31, Amdt 2.
12–Oct–17	GA	Dalton	Dalton Muni	7/3954	8/22/17	ILS OR LOC RWY 14, Amdt 1.
12–Oct–17	MT	Libby	Libby	7/3967	8/22/17	GPS–A, Orig-C.
12–Oct–17	WA	Seattle	Boeing Field/King County Intl.	7/4152	8/22/17	ILS OR LOC RWY 31L, Amdt 1B.

[FR Doc. 2017–21222 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD9826]

RIN 1545–BM71

Mortality Tables for Determining Present Value Under Defined Benefit Pension Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations prescribing mortality tables to be used by most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors. This information is used (together with other actuarial assumptions) to calculate the present value of a stream of expected future benefit payments for purposes of determining the minimum funding requirements for a defined benefit plan. These mortality tables are also relevant in determining the minimum required amount of a lump-sum distribution from such a plan. In addition, this document contains final regulations updating the requirements that a plan sponsor must meet to obtain IRS approval to use mortality tables specific to the plan for minimum funding purposes (instead of using the generally applicable mortality tables). These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans.

DATES:

Effective date: These regulations are effective on October 5, 2017.

Applicability date: These regulations apply to plan years beginning on or after January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Arslan Malik at (202) 317–6700; concerning the construction of the base mortality tables and the static mortality tables for 2018, Michael Spaid at (206) 946–3480.

SUPPLEMENTARY INFORMATION:

Background

A. Generally Applicable Mortality Tables

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans. Section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans.[1] Section 430(a) defines the minimum required contribution for a plan year by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) contains rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Those mortality tables must be based on the actual mortality experience of pension plan participants and projected trends in that experience. In prescribing those mortality tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans.[2] Under section

[1] Section 302 of the Employee Retirement Income Security Act of 1974, Public Law 93–406, as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these Treasury regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA.

[2] The standards prescribed for developing these mortality tables are the same as the standards that are prescribed for developing mortality tables for multiemployer plans under section 431(c)(6)(D)(iv)(II) (which are used to determine current liability as part of the calculation of the minimum full funding limitation under section 431(c)(6)(B)). These standards also apply for

430(h)(3)(B), the Secretary is required to make revisions to any table in effect under section 430(h)(3)(A) at least every 10 years to reflect actual mortality experience of pension plan participants and projected trends in that experience.

Section 430(h)(3)(C) prescribes rules for a plan sponsor's use of substitute mortality tables reflecting the specific mortality experience of a plan's population instead of using the generally applicable mortality tables. Under section 430(h)(3)(C), the plan sponsor may request the Secretary's approval to use plan-specific substitute mortality tables that meet requirements specified in the statute.

Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to section 430(h)(3)(A) or the substitute mortality tables under section 430(h)(3)(C). The Secretary is to establish separate tables for individuals with disabilities occurring in plan years beginning before January 1, 1995, and in later plan years, with the mortality tables for individuals with disabilities occurring in those later plan years applying only to individuals who are disabled within the meaning of Title II of the Social Security Act.

Final regulations (TD 9419) under section 430(h)(3) were published in the **Federal Register** for July 31, 2008 (73 FR 44632). The final regulations issued in 2008 include rules regarding generally applicable mortality tables, which are set forth in § 1.430(h)(3)–1 (the 2008 general mortality table regulations), as well as rules regarding substitute mortality tables, which are set forth in § 1.430(h)(3)–2 (the 2008 substitute mortality table regulations).

The 2008 general mortality table regulations prescribe a base mortality table and a set of mortality improvement rates that are used to project mortality rates for years after the year 2000. The mortality tables included in those regulations are based on the mortality tables included in the RP–2000 Mortality Tables Report (based on an experience study for the period 1990–1994 and referred to in this preamble as the RP–2000 mortality tables) released by the Society of Actuaries in July 2000 (updated in May 2001). The mortality improvement rates included in those regulations are the Scale AA Projection Factors (which are based on mortality improvement for the period 1977 through 1993), which were included in the RP–2000 Mortality Tables Report for use in conjunction with the RP–2000 mortality tables.[3]

The 2008 general mortality table regulations prescribe the use of generational mortality tables,[4] but include an option for plans to use static mortality tables. The static mortality tables (which are updated annually) use a single mortality table for all years of birth to approximate the present value that would be determined using the generational mortality tables. The 2008 general mortality table regulations set forth static mortality tables for valuation dates occurring in 2008 and provide that static mortality tables for valuation dates occurring in later years will be published in the Internal Revenue Bulletin. Static mortality tables for valuation dates occurring during 2009–2013 were published in Notice 2008–85 (2008–1 C.B. 747 (March 28, 2008)). Updated static mortality tables for valuation dates occurring during 2014 and 2015 were published in Notice 2013–49 (2013–32 I.R.B. 127 (July 10, 2013)). Updated static mortality tables for valuation dates occurring in 2016 and 2017 were published in Notice 2015–53 (2015–33 I.R.B. 190 (July 31, 2015)) and Notice 2016–50 (2016–38 I.R.B. 371 (September 2, 2016)), respectively.

Notice 2013–49 also requested comments on whether a separate disability mortality table is still warranted with respect to participants who became disabled before 1995. In addition, Notice 2013–49 noted that the Treasury Department (Treasury) and the IRS were aware that the Society of Actuaries was conducting a mortality study of pension plan participants and specifically requested comments on whether other studies of actual mortality experience of pension plan participants and projected trends of that experience were available that should be considered for use in developing mortality tables for future use under section 430(h)(3).

In October 2014, the Retirement Plans Experience Committee (RPEC) of the Society of Actuaries issued a new mortality study of participants in private pension plans. The study, which is based on mortality experience for the years 2004 to 2008, is referred to as the RP–2014 Mortality Tables Report (and sets forth mortality tables that are referred to as the RP–2014 mortality tables). The RP–2014 Mortality Tables Report, as revised November 2014, is available at *www.soa.org/Research/Experience-Study/pension/research-2014-rp.aspx.* At the same time, RPEC issued a companion study of mortality improvement, referred to as the Mortality Improvement Scale MP–2014 Report (which sets forth mortality improvement rates that are referred to as the Scale MP–2014 rates). As described in the Mortality Improvement Scale MP–2014 Report (available at *www.soa.org/Research/Experience-Study/pension/research-2014-mp.aspx*), the Scale MP–2014 rates were based on mortality improvement experience for the general population through 2009.

In October 2015, RPEC released an update to the Scale MP–2014 rates. The updated rates, referred to as the Scale MP–2015 rates, were released as part of the Mortality Improvement Scale MP–2015 Report (available at *https://www.soa.org/Research/Experience-Study/Pension/research-2015-mp.aspx*). The Scale MP–2015 rates were created using historical data for mortality improvement for the general population through 2011 and the same model and parameters that were used to produce the Scale MP–2014 rates. In conjunction with the release of the updated rates, RPEC indicated the intent to reflect the latest data available by providing future annual updates to the model as soon as practicable following the public release of updated data upon which the model is constructed.

In October 2016, RPEC released a further update to the Scale MP–2014 rates, which are referred to as the Scale MP–2016 rates. The Scale MP–2016 rates take into account data for mortality improvement for the general population for 2012 and 2013, along with an estimate of mortality rates for 2014. As described in the Mortality Improvement Scale MP–2016 Report (available at *www.soa.org/Research/Experience-Study/Pension/research-2016-mp.aspx*), in developing the Scale MP–2016 rates, RPEC changed some of the parameters from those that were used in developing the Scale MP–2014 rates.

B. Plan-Specific Substitute Mortality Tables

Section 430(h)(3)(C) permits a plan sponsor to request approval by the Secretary to use plan-specific substitute mortality tables in lieu of the generally applicable mortality tables. If the Secretary determines that the proposed

purposes of determining current liability as part of the calculation of the minimum full funding limitation under section 433(c)(7)(C) for a CSEC plan (as defined in section 414(y)).

[3] The RP–2000 Mortality Tables Report is available at *https://www.soa.org/experience-studies/2000-2004/research-rp-2000-mortality-tables/.*

[4] Generational mortality tables are a series of mortality tables, one for each year of birth, each of which fully reflects projected trends in mortality for individuals who are born in a particular year.

tables meet the statutory standards and approves the request, the substitute mortality tables are used to determine present values and make computations under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request. Under the statute, a substitute mortality table may be used for a plan, only if: (1) The plan has a sufficient number of plan participants and has been maintained for a sufficient period of time to have credible mortality information necessary to create a substitute mortality table; and (2) the table reflects the actual mortality experience of the plan's participants and projected trends in general mortality experience. Except as provided by the Secretary, a plan sponsor may not use substitute mortality tables for any plan unless substitute mortality tables are established and used for each plan maintained by the plan sponsor or a member of its controlled group.

The 2008 substitute mortality table regulations provide for review by the Commissioner of a plan sponsor's request for approval to use substitute mortality tables. Under those regulations, to use substitute mortality tables with respect to a plan, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables comply with applicable requirements. A request for approval to use substitute mortality tables must specify the first plan year and the term of years for which the tables are requested to be used.

Substitute mortality tables may not be used for a plan year unless the plan sponsor submits the request at least 7 months before the first day of the first plan year for which the substitute mortality tables are to apply. The Commissioner has 180 days to review a request for approval to use substitute mortality tables. If the Commissioner does not deny the request within this 180-day period, the request is deemed to have been approved unless the Commissioner and the plan sponsor have agreed to extend that period.

Under the 2008 substitute mortality table regulations, substitute mortality tables for a plan must be established separately for each gender, and a substitute mortality table may be established for a gender only if there is credible mortality experience with respect to that gender. If the mortality experience for one gender is credible but the mortality experience for the other gender is not credible, the substitute mortality tables are used for the gender that has credible mortality experience, and the generally applicable mortality tables are used for the gender that does not have credible mortality experience.

Under the 2008 substitute mortality table regulations, there is credible mortality experience with respect to a gender if and only if, over the period covered by the experience study, there are at least 1,000 deaths of individuals of that gender.[5] For this purpose, the minimum length of the experience study period is 2 years and the maximum length of the experience study period generally is 5 years. Furthermore, the last day of the final year reflected in the experience data must be less than three years before the first day of the first plan year for which the substitute mortality tables are to apply.

Under the 2008 substitute mortality table regulations, development of substitute mortality tables for a plan requires creation of a base table and identification of a base year, which are then used to determine the substitute mortality tables. The base table must be developed from a study of the mortality experience of the plan using amounts-weighted data. Under those regulations, a plan's substitute mortality tables must be generational mortality tables that are determined using the base mortality tables developed from the experience study and the Scale AA Projection Factors (that is, using the same basis for mortality improvement that is used under 2008 general mortality table regulations).

Under the 2008 substitute mortality table regulations, the use of substitute mortality tables is terminated early in certain circumstances, including pursuant to a replacement of the generally applicable mortality tables. The early termination pursuant to such a replacement must be effective as of a date specified in guidance published in the Internal Revenue Bulletin.

Rev. Proc. 2008–62 (2008–2 C.B. I.R.B. 935) sets forth the procedure by which a plan sponsor of a defined benefit plan may request and obtain approval to use plan-specific substitute mortality tables in accordance with section 430(h)(3)(C). The revenue procedure specifies the information that must be provided in a request for approval to use substitute mortality tables and specifies two alternative acceptable methods of construction for base substitute mortality tables. Under section 11 of Rev. Proc. 2008–62, a base table for a population may be created from the unadjusted base table for the population through the application of a graduation method generally used by the actuarial profession in the United States.[6] Section 12 of Rev. Proc. 2008–62 provides for an alternative method of constructing a base table through the application of a fixed percentage to the mortality rates of a standard mortality table, projected to the base year.

Section 503 of the Bipartisan Budget Act of 2015, Public Law 114–74 (129 Stat. 584 (2015)), which was enacted November 2, 2015, provides for changes to the rules on the use of substitute mortality tables. Under that section, ''the determination of whether plans have credible information shall be made in accordance with established actuarial credibility theory, which (1) is materially different from the rules under [section 430(h)(3)(C)], including Revenue Procedure 2007–37,[7] that are in effect on [November 2, 2015]; and (2) permits the use of tables that reflect adjustments to the tables described in [section 430(h)(3)(A) and (B)]'' if those adjustments are based on the actual experience of the pension plan maintained by the plan sponsor.

Proposed regulations regarding revisions to mortality tables under section 430(h)(3) (REG–112324–15) were published in the **Federal Register** on December 29, 2016 (81 FR 95911). The proposed regulations contain revisions to the generally applicable mortality tables (based on the RP–2014 Mortality Tables Report), as well as new rules regarding substitute mortality tables that reflect section 503 of the Bipartisan Budget Act of 2015. Comments were received on the proposed regulations, and a public hearing was held on April 13, 2017. After consideration of the comments, the proposed regulations are adopted by this Treasury decision subject to certain changes, the most significant of which are described in this preamble under the heading Explanation of Provisions.

Explanation of Provisions

I. Overview

These final regulations revise the methodology for developing the

[5] The 1,000-death threshold for credible mortality experience under the regulations was intended to provide a high degree of confidence that the plan's past mortality experience will be predictive of its future mortality, and is consistent with relevant actuarial literature (see, for example, Thomas N. Herzog, Introduction to Credibility Theory (1999); Stuart A. Klugman, *et. al.,* Loss Models: From Data to Decisions (2004)).

[6] The revenue procedure identifies the Whittaker-Henderson Type B graduation method or the Karup-King graduation method as acceptable methods.

[7] Rev. Proc. 2007–37, 2007–1 CB 1433, was not in effect on November 2, 2015. It was issued in 2007 in conjunction with proposed regulations regarding substitute mortality tables (REG–143601–06, 72 FR 29456) and was replaced by Rev. Proc. 2008–62 when those regulations were finalized in 2008.

generally applicable mortality tables that are used to determine present value or make any computation under section 430. Pursuant to section 417(e)(3)(B), a modified version of these tables will be used for purposes of determining the amount of a single-sum distribution (or another accelerated form of distribution). This revised methodology for developing tables under section 430(h)(3)(A) is being issued pursuant to the requirement under section 430(h)(3)(B) to revise the mortality tables used under section 430 at least every 10 years to reflect the actual mortality experience of pension plan participants and projected trends in that experience. As under the 2008 general mortality table regulations, the methodology involves the separate determination of base tables and the projection of mortality improvement.

These regulations also revise the rules regarding substitute mortality tables. This revision is being made pursuant to section 503 of the Bipartisan Budget Act of 2015, which requires that the determination of whether a plan has credible information be made in accordance with established actuarial credibility theory. Following enactment of that requirement, Treasury and the IRS undertook a review of actuarial literature regarding credibility theory and consulted with experts on that topic from the Society of Actuaries. Based on that review and analysis, these regulations set forth a method for developing substitute mortality tables that is materially different from the method that is required under the 2008 substitute mortality table regulations and the associated revenue procedure. The method for developing substitute mortality tables that is set forth in the final regulations is simpler than the graduation method that applies under the 2008 substitute mortality table regulations and also accommodates the use of substitute mortality tables for plans with smaller populations that have only partially credible mortality experience.

II. Generally Applicable Mortality Tables

A. Base Mortality Tables

Under these regulations, the generally applicable base mortality tables are derived from the tables contained in the RP–2014 Mortality Tables Report. In response to Notice 2013–49, commenters generally recommended that the RP–2014 mortality tables form the basis for the mortality tables used under section 430. After reviewing the RP–2014 mortality tables, the accompanying report published by the Society of Actuaries, and related public comments, Treasury and the IRS determined that the experience study used to develop the RP–2014 mortality tables is the best available study of the actual mortality experience of pension plan participants (other than disabled individuals). As a result, Treasury and the IRS issued proposed regulations that use the RP–2014 mortality tables as the foundation for the base mortality tables used to project the mortality rates of pension plan participants (other than disabled individuals).[8]

Most commenters supported the selection of the base mortality tables in the proposed regulations. One commenter opposed this selection but did not suggest any alternative. Accordingly, the base mortality tables under these final regulations are the same as in the proposed regulations. Like the mortality tables provided in the 2008 general mortality table regulations, the mortality tables under these final regulations are gender-distinct because of significant differences between expected male mortality and expected female mortality. In addition, as under the 2008 general mortality table regulations, these regulations set forth separate mortality rates for annuitants and nonannuitants.

The base tables that are set forth in these final regulations are used to develop the mortality tables for future years. These base tables have a base year of 2006 (the central year of the experience study used to develop the mortality tables in the RP–2014 Mortality Tables Report). These base tables generally have the same mortality rates as the RP–2014 mortality tables after factoring out the mortality improvements from 2007 to 2014 (calculated using the Scale MP–2014 rates). However, these base tables also include nonannuitant mortality rates for ages below age 18 and above age 80 and annuitant mortality rates for ages below age 50. This generally is the same approach that was used to develop the base tables included in the 2008 general mortality table regulations.

B. Mortality Improvement and Static Mortality Tables

The proposed regulations, like the 2008 general mortality table regulations, provided that expected trends in mortality experience must be taken into account through the use of either generational or annually updated static mortality tables. In accordance with section 430(h)(3)(B), the proposed regulations updated the mortality improvement rates used under the 2008 general mortality table regulations. To select up-to-date mortality improvement rates, Treasury and the IRS reviewed the Mortality Improvement Scale MP–2014 Report, related public comments, the data sources cited in those comments, the Mortality Improvement Scale MP–2015 Report, the Mortality Improvement Scale MP–2016 Report, and other published data sources.[9] After that review, Treasury and the IRS issued proposed regulations that applied the MP–2016 rates to develop mortality tables for use in 2018.

Some commenters supported the selection of the mortality improvement rates in the proposed regulations, while other commenters expressed concerns about the selection of those rates. Those commenters who expressed concern about the mortality improvement rates noted that the selection of a long-term mortality improvement rate assumption is inherently speculative and cautioned against using the assumptions regarding the rate of long-term mortality improvement that were used by RPEC (which are a long-term rate of 1.0 percent per year for ages 85 and younger, grading down to 0.85 percent at age 95, and further grading down to 0 at age 115). Instead of the RPEC assumptions, these commenters suggested that Treasury and the IRS use assumptions regarding the rate of long-term mortality improvement that are closer to the rates that are used by the Office of the Actuary within the Social Security Administration. Those rates also vary by age group, and the documentation accompanying the 2017 report of the Board of Trustees of the Federal Old-Age, Survivors Insurance and Disability Insurance Trust Funds indicates that, under the intermediate assumptions (which reflect the Trustees' best estimates of future experience), the weighted average over all ages of those assumed long-term mortality improvement rates is 0.72 percent per year.[10]

Treasury and the IRS carefully considered the assumptions used by Office of the Actuary within the Social Security Administration and compared it with the long-term assumptions

[8] Mortality tables that may be used as an alternative to the tables provided in these regulations with respect to certain disabled individuals are provided in Rev. Rul. 96–7 (1996–1 CB 59).

[9] See the August 2013 Literature Review and Assessment of Mortality Improvement Rates in the U.S. Population: Past Experience and Future Long-Term Trends, available at *www.soa.org/Files/Research/Exp-Study/research-2013-lit-review.pdf.*

[10] See ''The Long-Range Demographic Assumptions for the 2017 Trustees Report,'' Office of the Chief Actuary, Social Security Administration (July 13, 2017), at Mortality, page 17 (available at *https://www.ssa.gov/OACT/TR/2017/2017_Long-Range_Demographic_Assumptions.pdf*).

currently recommended by RPEC. In evaluating the merits of each, Treasury and the IRS took into consideration the views of the Technical Panel of the Social Security Advisory Board. The Social Security Advisory Board is an independent federal government agency, and the Technical Panel, which is comprised of actuaries, economists and demographers, is charged by the Advisory Board with reviewing the assumptions and methods used in the annual report of the Board of Trustees of the Federal Old-Age, Survivors Insurance and Disability Insurance Trust Funds. The Technical Panel, which issues a report every 4 years, has consistently recommended that the mortality improvement assumption used by the Office of the Actuary be increased.[11] In addition, the Congressional Budget Office uses a faster rate of mortality improvement in evaluating Social Security solvency than the Office of the Actuary.[12]

After review and consideration of the comments, the documentation accompanying the Trustees' Report, and the views of the Technical Panel of the Social Security Advisory Board, Treasury and the IRS have concluded that the procedures that RPEC used to develop the Scale MP–2016 rates generate mortality improvement rates that currently are the appropriate rates for use in developing mortality tables to be used for purposes of pension funding. Accordingly, these regulations provide that the mortality improvement rates for valuation dates in 2018 are the Scale MP–2016 rates.

Treasury and the IRS understand that RPEC expects to issue updated mortality improvement rates that reflect new data for mortality improvement trends for the general population on an annual basis. As noted by the commenters, while the rate of mortality improvement has fluctuated significantly on a year-to-year basis, there has been a significant reduction in the rate of improvement over the past few years compared to the rate of improvement for the past 25 years. RPEC has indicated the intent to continually review the methodology used in its mortality improvement model in an effort to improve the overall effectiveness of the model, especially with respect to year-over-year stability and forecast accuracy, and it has identified the assumed long-term rate of mortality improvement and graduation techniques as two of the items included in this review. In establishing the mortality improvement rates to be used under section 430(h)(3) for valuation dates in years after 2018, Treasury and the IRS will continue to take into account RPEC's updates (including any modifications to RPEC's methodology), as well as other sources of data or analyses regarding mortality improvement. These regulations provide that the mortality improvement rates applicable for those future valuation dates will be specified in guidance to be published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter. If Treasury and the IRS determine that significant revisions to the mortality improvement rates are appropriate, the revisions may first be proposed in a new rulemaking in order to allow for public comment before the rule is finalized.

Some commenters asked that Treasury and the IRS commit to providing the mortality improvement rates for a calendar year at least 12 months before the start of that year. Treasury and the IRS understand that a significant motivation for this request is to avoid the issuance of new mortality improvement rates in the early part of a calendar year (because issuance of new mortality improvement rates at that time could result in the need to revise calculations that have already been made in the course of preparing a plan sponsor's financial statement as of the previous December 31). While Treasury and the IRS intend that the mortality improvement rates for a calendar year generally will be issued more than 12 months in advance of that year, the final regulations do not include a provision requiring that the mortality improvement rates for a calendar year be issued within this timeframe. Retaining the flexibility to issue mortality improvement rates closer to the date they would become effective will allow additional time for the possibility that certain revisions to the mortality improvement rates will first be published in proposed form.

Other commenters requested that Treasury and the IRS consider updating the mortality tables on a less frequent basis than annually. Although the RPEC indicated its intent to issue updated mortality improvement rates on an annual basis, the final regulations do not require the mortality improvement rates under section 430(h)(3) to be updated annually. However, to minimize the discontinuities in mortality rates that could arise from infrequent updates, Treasury and the IRS contemplate that generally the rates will be updated annually. If the changes from one year to the next are minimal, Treasury and the IRS may choose not to update the rates for that year.

As under the 2008 general mortality table regulations, the proposed regulations take into account the limitations of some current actuarial software that is not designed to use generational mortality tables and continue to permit the use of static mortality tables. These static mortality tables, when used to determine the present value of an annuity, approximate the present value that would be determined using the generational mortality tables. All but one commenter supported the option to use static mortality tables, and these final regulations provide for this option. These static tables consist of separate gender-specific tables, which are updated annually. The static mortality tables that will be used for 2018 are included in these regulations. For later years, updated static mortality tables will be set forth in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

C. Use of Section 430 Mortality Tables for Other Provisions

Section 417(e)(3) generally provides that the present value of certain benefits under a qualified pension plan (including single-sum distributions) must not be less than the present value of the accrued benefit using applicable interest rates and the applicable mortality table. Section 417(e)(3)(B) defines the term ''applicable mortality table'' as the mortality table specified for the plan year for minimum funding purposes under section 430(h)(3)(A) (without regard to the rules for substitute mortality tables under section 430(h)(3)(C) or mortality tables for disabled individuals under section 430(h)(3)(D)), modified as appropriate by the Secretary. The modifications to the section 430(h)(3)(A) mortality table used to determine the section 417(e)(3)(B) applicable mortality table are not addressed in these regulations and are currently provided in Revenue Ruling 2007–67 (2007–2 C.B. 1047).

As under the proposed regulations, the final regulations provide that the same mortality assumptions that apply for purposes of section 430(h)(3)(A) and § 1.430(h)(3)–1(a)(2) are used to determine a plan's current liability for purposes of applying the full-funding

[11] See ''2015 Technical Panel on Assumptions and Methods Report to the Social Security Advisory Board,'' available at *www.ssab.gov/Details-Page/ArticleID/656/2015-Technical-Panel-on-Assumptions-and-Methods-A-Report-to-the-Board-September-2015*.

[12] See Comparing CBO's Long-Term Projections with Those of the Social Security Trustees: Hearing before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, 114th Cong. September 21, 2016 (Testimony of Keith Hall), *available at https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51988-socialsecuritytestimony.pdf*.

rules of section 431(c)(6) (in the case of a multiemployer plan) and section 433(c)(7)(C) (in the case of a CSEC plan). For this purpose, a multiemployer plan or CSEC plan is permitted to apply either the annually-adjusted static mortality tables or the generational mortality tables.

D. Effective Date

The proposed regulations provide that the regulations will be effective beginning in 2018. Some commenters expressed concern that this effective date would not allow adequate time for compliance. One commenter requested that the effective date of the regulations be no sooner than 18 months after the regulations are finalized in order to give plan sponsors adequate time to plan for the higher level of contributions that will be required under the new mortality assumptions. Treasury and the IRS understand that most employers have been planning for the issuance of updated mortality tables for the purposes of section 430 since the RP–2014 Mortality Tables Report was issued in 2014 and many of those employers are already using updated mortality tables for financial reporting purposes. Furthermore, any additional required contributions for a plan resulting from the adoption of the new tables will not be due before September 15, 2019. For a plan with a calendar plan year, this date is 8½ months after the end of the first plan year for which the regulations apply.[13]

Moreover, as described in section II.C of this Explanation of Provisions, the amount of a single-sum distribution computed as the present value of an annuity is determined using a mortality table that is based on the generally applicable mortality tables used for minimum funding purposes. Thus, retaining the mortality tables under existing regulations for the 2018 plan year, as requested by some commenters, would result in inappropriately depressing the amount of single-sum distributions payable to affected participants during the 2018 plan year (resulting in a permanent loss of retirement assets for those participants). A 2013 study indicates that approximately 56 percent of retiring participants in a traditional defined benefit plan with an unlimited single-sum option choose that option.[14] In addition, the Government Accountability Office recently issued a study examining the increase in ''lump-sum window'' offers—typically, limited time offers to participants who are no longer employed by the sponsor but still waiting for their pension benefit to begin in the future, or retirees already receiving their pension annuity payments.[15] Similarly, Willis Towers Watson reported significant risk transferring activity in recent years through lump sum windows and other means.[16]

Because these rules were proposed in December of 2016 to be applicable as final regulations for plan years beginning on and after January 1, 2018, the Treasury Department and the IRS believe that many plan sponsors have had adequate time to set aside funds needed for additional pension contributions for the 2018 plan year. Furthermore, because the steps that plan sponsors will need to take to update their administrative systems in response to these final regulations are not significantly different from the steps they would need to take in response to the annual update of mortality tables that has previously occurred at this time of the year, the Treasury Department and the IRS believe that plan sponsors generally will have sufficient time to make any needed changes to these administrative systems.[17]

The final regulations generally retain the effective date that was proposed, and apply to plan years beginning on or after January 1, 2018. In response to comments indicating that this effective date may create certain administrative or financial difficulties, the final regulations provide an option that may be used in certain circumstances for the 2018 plan year to apply the regulations that were formerly in effect. Specifically, for a plan for which substitute mortality tables are not used for the 2018 plan year, mortality tables determined in accordance with regulations previously in effect may be used for purposes of applying the rules of section 430 for a valuation date occurring during 2018 if the plan sponsor (1) concludes that the use of mortality tables determined in accordance with the final regulations for the plan year would be administratively impracticable or would result in an adverse business impact that is greater than de minimis, and (2) informs the actuary of the intent to apply this option. While this option provides significant flexibility to plan sponsors, the use of the option will not affect the mortality table used to determine minimum present value for distributions with annuity starting dates in stability periods that begin during 2018 (which is based on the generally applicable mortality tables under section 430(h)(3)(A) that apply if this option is not used). Therefore, the lump-sum distributions received by participants retiring in 2018 will appropriately reflect their expected longevity.

III. Plan-Specific Substitute Mortality Tables

A. Application of Established Actuarial Credibility Theory

These final regulations contain a comprehensive revision of the rules regarding plan-specific substitute mortality tables for plans that are subject to the rules of section 430.[18] These regulations carry over many of the rules regarding substitute mortality tables from the 2008 substitute mortality table regulations. However, after analyzing the actuarial literature regarding credibility theory, Treasury and the IRS made a number of changes to the rules relating to the development of substitute mortality tables. Specifically, these final regulations, like the proposed regulations, generally require that a substitute mortality table be constructed by multiplying the mortality rates from a projected version of the generally applicable base mortality table by a mortality ratio (that

[13] However, new mortality tables may affect plan operations relating to the requirements of section 436 during the 2018 plan year.

[14] Sudipto Banerjee, Ph.D., Employee Benefits Research Institute, *Issue Brief: Annuity and Lump-Sum Decisions in Defined Benefit Plans: The Role of Plan Rules,* January 2013, *available at https://www.ebri.org/pdf/briefspdf/EBRI_IB_01-13.No381.LSDs2.pdf.*

[15] U.S. Government Accountability Office, *GAO 15–74, Participants Need Better Information When Offered Lump Sums That Replace Their Lifetime Benefits* (January 2015). This report also notes the substantial financial advantages that exist for plan sponsors implementing lump sum windows and attributes the recent increase in lump-sum window offers, in part, to the outdated mortality tables in the current regulations, which result in reduced payments to plan participants. Id. at pp. 16–17.

[16] Brendan McFarland, *After a few ups and downs, corporate pension funding levels showed little change in 2016: Late-year rise in interest rates and stock market performance mitigate earlier downturn in* funded *status,* Willis Towers Watson Insider, Vol. 27, No. 2 (February 2017) at p. 3, *available at https://www.towerswatson.com/en-US/Insights/Newsletters/Americas/insider.*

[17] See section 4. of the Regulatory Impact Assessment provided under the heading Special Analyses, Regulatory Planning and Review (Executive Orders 12866 and 13563) in this preamble for a discussion of needed changes in administrative systems.

[18] There is no provision for defined benefit plans that are not subject to the requirements of section 430 (such as multiemployer plans) to request approval to use of substitute mortality tables. However, the mortality tables under section 430(h)(3) are required to be used for those plans only for very limited purposes (and the mortality tables used for those plans for most purposes, while subject to the requirements of section 431(c)(3) or 433(c)(3), are not tables specified by statute or regulations).

is, a ratio of the actual deaths for the population to the expected deaths determined using the standard mortality tables for that population).

Use of mortality ratios (rather than providing for the graduation of raw mortality rates as under the 2008 substitute mortality table regulations) will make it easier for plan sponsors to develop substitute mortality tables because it eliminates the need to apply a complex graduation technique. It also facilitates efficient IRS review of applications for approval to use substitute mortality tables, which is particularly important in light of the other major change made in the regulations (permitting the use of substitute mortality tables for a plan that has mortality experience that is only partially credible). As a result of the changes made in these regulations, Treasury and the IRS expect that significantly more plan sponsors will request approval to use substitute mortality tables.

B. Development of Substitute Mortality Tables for Plans With Full Credibility

The substitute mortality table for a population with full credibility must be determined by applying projected mortality improvement to a base substitute mortality table developed using an experience study of the population. Like the proposed regulations, the final regulations use the same general requirements for an experience study as under the 2008 substitute mortality table regulations but reflect certain changes from the proposed regulations in response to comments. Specifically, the experience study generally must cover a period of at least 2 (and no more than 5) consecutive 12-month periods that ends less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply, and must cover the same period for all populations within a plan.[19] However the final regulations include an exception that permits the use of an earlier study period if the submission is made more than 1 year (and less than 2 years) before the first day of the first plan year for which the substitute mortality tables are proposed to apply. Under this exception, the last day of the experience study period is permitted to be 3 years or more before the first day of the first plan year for which the substitute mortality tables are proposed to apply, provided that the last day of the experience study period is less than 2 years before the application is submitted.

A base substitute mortality table generally is determined by multiplying the mortality rates from the corresponding standard mortality table (that is, the generally applicable base mortality table for the population, projected with mortality improvement to the base year for the base substitute mortality table) by the mortality ratio for the population. For this purpose, the mortality improvement rates that apply for the calendar year during which the plan sponsor submits the request for approval to use substitute mortality tables are used to project the generally applicable base mortality table to the base year for the base substitute mortality table.[20] The mortality ratio is determined as a fraction, the numerator of which is the number of actual deaths during the experience study period (with each death weighted by the benefit amount) and the denominator of which is the number of expected deaths during that period (determined using the standard mortality table) weighted by the benefit amount. An individual's benefit amount (which is used to determine amounts-weighted mortality rates and for other purposes in the construction of base substitute mortality tables) is the individual's accrued benefit expressed in the form of an annual benefit commencing at normal retirement age (or at the current age, if later) if the individual has not commenced benefits, and the individual's annual payment if the individual has commenced benefits. Consistent with section 503 of the Bipartisan Budget Act of 2015 (and unlike § 1.430(h)(3)–2(c)(2)(ii)(D) of the 2008 substitute mortality table regulations, which provides that the Commissioner may permit the use of other recognized mortality tables to construct the base substitute mortality table), the regulations provide that the standard mortality table that must be used for this purpose is the generally applicable base mortality table projected with mortality improvement to the base year for the base substitute mortality table.

Some commenters pointed out that multiplying mortality ratios for a population by the mortality rates in the applicable standard mortality table could yield inappropriate results at extremely old ages. In response to those comments, the final regulations provide that mortality rates under the base substitute mortality tables must be the same as the mortality rates under the standard mortality table for ages above 109 and that a modified mortality ratio is used for ages from 96 through 109 (to accomplish a gradual transition to the standard mortality table while avoiding inappropriate results). If the mortality ratio for the population is greater than 1.0, the modified mortality ratio for an age within this range is equal to the mortality ratio for the population reduced by 1/15th of the excess of the mortality ratio over 1.0 for each year by which the age exceeds 95. If the mortality ratio for the population is less than 1.0, the modified mortality ratio for an age within this range is equal to the mortality ratio for the population increased by 1/15th of the excess of 1.0 over the mortality ratio for each year by which the age exceeds 95.

C. Standards for Full Credibility

The proposed regulations revised the standard for full credibility of a population under the 2008 substitute mortality table regulations (which is 1,000 actual deaths for the relevant population during the experience study period) to better reflect established actuarial credibility theory. Under established actuarial credibility theory, the 1,000-death threshold (which is a rounding down of the 1,082 actual deaths that would be needed for a 90% confidence level that the measured rate is within 5% of the underlying mortality rate) should apply to the credibility for a single mortality rate and not an entire mortality table.[21] Moreover, the 1,000 death threshold did not take into account the well-established actuarial principle that mortality experience within a population will vary predictably based on the amount of the annuity (or life insurance, as applicable). The base tables for the generally applicable mortality tables were constructed on an amounts-weighted basis (under which the individuals with higher benefit amounts have a greater weight in the computation of the mortality rate for a

[19] As under the 2008 regulations and the proposed regulations, the final regulations provide for permissive aggregation of plans of a plan sponsor for purposes of developing and using substitute mortality tables. The final regulations clarify that if two or more plans with different plan years are aggregated, the experience study may consist of data that is collected over different periods for plans with different plan years, subject to certain conditions.

[20] If the plan sponsor submits such a request during 2017, then mortality improvement is reflected using the mortality improvement rates that generally apply for use for 2018, which are the Scale MP–2016 rates.

[21] Although the use of a graduation technique under Rev. Proc. 2008–62 enables a plan with fewer than 1,000 deaths at each age to have credible mortality experience that may be used to establish a substitute mortality table, the statutory instruction providing that the determination of whether a plan has credible mortality information be made in accordance with established actuarial credibility theory which is materially different than the rules in effect on November 2, 2015, led to the elimination of that technique.

particular age); accordingly, substitute mortality tables should be constructed using the same principle.

Using established actuarial credibility theory to evaluate whether a population has fully credible mortality experience entails the use of a threshold that takes into account the dispersion of benefits within the population. Accordingly, under the proposed regulations, the number of deaths that are needed for a population within a plan to have fully credible mortality experience is determined as the product of 1,082 and the benefit dispersion factor for the population.[22] The benefit dispersion factor for a population is equal to the number of expected deaths for the population during the experience study period, multiplied by the sum of the mortality-weighted squares of the benefits, divided by the square of the sum of the mortality-weighted benefits.[23]

Commenters supported the actuarial soundness of the standard for fully credible mortality information under the proposed regulations, and the final regulations adopt the provisions of the proposed regulations regarding full credibility. At the request of commenters, the regulations include expressions of various formulas in mathematical notation to assist actuaries in making computations under the regulations.[24]

One commenter noted that the increase of the threshold for full credibility (together with the inability to reflect the pattern of the plan's mortality experience at different ages) may produce substitute mortality tables that are substantially different than those that are currently in use. To address this concern, in part, the final regulations include an option to increase the credibility of a plan's mortality experience by basing it on the combined mortality experience of both genders.[25]

[22] This formula for the number of deaths needed for full credibility is based on the assumption that the distribution of releases from liability due to deaths follows a compound Poisson model. See *www.actuaries.ca/members/publications/2002/202037e.pdf.*

[23] See Gavin Benjamin, Selecting Mortality Tables: A Credibility Approach, available at *www.soa.org/Files/Research/Projects/research-2008-benjamin.pdf.*

[24] In the proposed regulations, these formulas were stated as amounts to be computed separately for each age and then summed for the population. The final regulations instead state these formulas more concisely as amounts to be computed for the entire population. These two approaches yield mathematically identical results.

[25] This option is described in section III.F.2 of this Explanation of Provisions (Option to use combined male and female mortality experience).

D. Partial Credibility

As under the proposed regulations, the final regulations permit substitute mortality tables to be used for a plan that does not have sufficient deaths to have fully credible mortality information. In accordance with established actuarial credibility theory, the substitute mortality table used for such a plan is the weighted average of the standard mortality table and the substitute mortality table that would be developed for the plan if it were to have fully credible mortality information. The weight for the substitute mortality table that would be developed for the plan if the plan were to have fully credible mortality information is the square root of a fraction, the numerator of which is the actual number of deaths for the population within the experience study period and the denominator of which is the number of deaths needed for the plan to have fully credible mortality information.

E. Controlled Group Consistency Requirement

Under section 430(h)(3)(iv) there is a general consistency requirement for the use of substitute mortality tables with respect to all plans within a controlled group. Thus, use of substitute mortality tables for a plan is generally permitted only if substitute mortality tables are used for all plans subject to section 430 that are maintained within the controlled group of the plan sponsor.

The 2008 substitute mortality table regulations set forth an exception from this consistency requirement for plans that did not have credible mortality experience. As a result of the change permitting the use of substitute mortality tables for plans that have only partially credible mortality information, Treasury and the IRS concluded that the exception should be modified so that it only applies to plans with a relatively small population. Accordingly, the regulations provide that a population does not have credible mortality information (and so a substitute mortality table is neither permitted nor required to be used for that population) if the actual number of deaths for that population during the experience study period is less than 100. For this purpose, the length of the experience study period must be the same length as the longest experience study period for any plan in the controlled group [26] and must end less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply. Treasury and the IRS proposed the use of a threshold of 100 deaths to balance the benefit of the use of substitute mortality tables for a plan with a relatively small population (which would be small, given the relatively low weight assigned to that plan's partially credible mortality experience) against the burden of developing substitute mortality tables for that plan (which would be required to comply with the controlled group consistency requirement). No comments were received objecting to this threshold or recommending a different threshold. As a result, the final regulations adopt the proposed 100-death threshold.

[26] If a plan has credible mortality information for one gender but not for the other gender, the length of the period of this demonstration is the length of the experience study for that plan.

F. Other Rules Relating to the Use of Substitute Mortality Tables

1. Multiple-Employer Plans

In response to comments, the final regulations provide rules regarding the use of substitute mortality tables in connection with multiple-employer plans. Under the final regulations, the application for use of substitute mortality tables in the case of a multiple-employer plan must be made by the plan administrator, and the substitute mortality tables must apply on a plan-wide basis (even if the plan is subject to the rules of section 413(c)(4)(A)).

In addition, the final regulations provide special rules for the application of the controlled group consistency rule in the case of a multiple-employer plan. Under this special rule, an employer participating in a multiple-employer plan is treated as maintaining that plan if and only if the proportion of the plan's funding target attributable to the employees and former employees of the employer and members of the employer's controlled group is greater than 50 percent. Thus, such an employer is subject to the controlled group consistency rule with respect to the multiple-employer plan and any other plans subject to section 430 maintained by that employer (or any member of that employer's controlled group). By contrast, if the proportion of the multiple-employer plan's funding target attributable to the employees and former employees of the employer and members of the employer's controlled group is less than or equal to 50 percent, then that employer is not subject to the controlled group consistency rule with respect to the multiple-employer plan and any other plans subject to section 430 maintained by that employer (and any member of that employer's controlled group).

2. Option To Use Combined Male and Female Mortality Experience

Some commenters requested the ability to develop and use substitute mortality tables based on the combined experience of both males and females in the plan, to increase the credibility of mortality experience for a smaller population. Treasury and the IRS have determined that this approach is consistent with established actuarial credibility theory. Accordingly, the final regulations provide that a single mortality ratio may be developed for both genders and then used to construct separate gender-specific base substitute mortality tables for the plan. If this option is applied for a plan, then substitute mortality tables used for all plans in the plan sponsor's controlled group must be constructed in this manner (except for plans for which both the male and female populations, considered separately, have mortality experience with full credibility). In addition, if this option is applied for a plan, then the mortality experience for both genders must be combined for all other purposes under the regulations, including the determination of: (1) Whether a plan has credible mortality information for purposes of the controlled group consistency requirement; (2) whether the mortality experience for a plan has full credibility; and (3) the partial credibility weighting factor.

3. Special Rules for Newly-Affiliated Plans

The proposed regulations provide for a transition period during which the controlled group consistency requirement does not apply with respect to a newly-affiliated plan (that is, a plan that has become maintained within the new controlled group in connection with a transaction described in § 1.410(b)–2(f)). In response to comments, the final regulations extend the transition period during which the controlled group consistency requirement does not apply with respect to a newly-affiliated plan so that it ends on the last day of the plan year that immediately follows the period described in section 410(b)(6)(C)(ii) for any of the plans in the controlled group (whichever ends latest). For example, if all of the plans involved have a plan year that is the calendar year and a corporate transaction occurs during 2017, then the transition period during which the controlled group consistency requirement does not apply ends on December 31, 2019 (the end of the plan year that immediately follows December 31, 2018, which is the end of the period described in section 410(b)(6)(C)(ii)). This longer transition period will ensure that the plan sponsor has adequate time to complete an experience study covering the newly-affiliated plan for use in its submission for approval of substitute mortality tables for a plan year beginning January 1, 2020. As under the proposed regulations, the final regulations provide that this experience study may exclude the pre-affiliation data and the experience study period may be as short as 1 year (instead of 2 years). Therefore, under the facts of this example, the experience study used to develop substitute mortality tables for the plan may cover only calendar year 2018.[27]

4. Early Termination of Use of Substitute Mortality Tables and Transition Rule

The final regulations retain the rules from the 2008 substitute mortality table regulations regarding the termination of use of substitute mortality tables before their originally scheduled expiration. Among the circumstances that lead to early termination is the replacement of the generally applicable mortality tables (other than annual updates to the static mortality tables or changes to the mortality improvement rates).

In response to comments, the final regulations include a transition rule under which previously approved base substitute mortality tables continue to apply for plan years beginning in 2018 (assuming that plan year is covered by the original approval and that substitute mortality tables are used by all of the plans within the controlled group that have credible mortality experience under the standards in the 2008 substitute mortality table regulations). In addition, previously approved base substitute mortality tables continue to apply to later plan years during the term of their original approval, provided that the plan sponsor satisfies the requirement that substitute mortality tables be used for all plans in the controlled group that have credible mortality information under the standards in these regulations. However, the mortality improvement rates under the final regulations, rather than the Scale AA Projection Factors (which were used under the 2008 substitute mortality table regulations), must be applied to previously approved base substitute mortality tables beginning in 2019.

[27] However, if the experience study is used to demonstrate a lack of credible mortality information, the experience study period may be shorter than required under the otherwise applicable rules only if it starts on the date the plan becomes a newly-affiliated plan.

G. Effective Date

These regulations regarding substitute mortality tables apply to plan years beginning on or after January 1, 2018, subject to certain transition relief. In addition to the transition relief for previously approved base mortality tables described in section III.F.4 of the Explanation of Provisions portion of this preamble, the requirement that a plan sponsor apply for approval to use substitute mortality tables at least 7 months before the beginning of the plan year will be treated as satisfied if the plan sponsor's application is submitted on or before February 28, 2018, provided that the plan sponsor agrees to a 90-day extension of the 180-day review period.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *www.irs.gov.*

Special Analyses

Regulatory Planning and Review (Executive Orders 12866 and 13563)

It has been determined that these regulations constitute a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Accordingly, these rules have been reviewed by the Office of Management and Budget. The Regulatory Impact Assessment prepared by Treasury for these regulations is provided below. This rule is not subject to the requirements of Executive Order 13771 because this rule results in no more than *de minimis* costs.

1. Description of Need for the Regulations

Section 430 of the Internal Revenue Code specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans. Section 430(h)(3) contains rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430.[28] Under section 430(h)(3)(B), the

[28] Those mortality tables must be based on the actual mortality experience of pension plan

Secretary is required to revise any mortality table in effect under section 430(h)(3)(A) at least every 10 years to reflect actual mortality experience of pension plan participants and projected trends in that experience.

Section 430(h)(3)(C) prescribes rules for a plan sponsor's use of substitute mortality tables reflecting the specific mortality experience of a plan's population. Section 503 of the Bipartisan Budget Act of 2015 requires certain changes in the rules for developing a plan's substitute mortality tables.

The existing regulations regarding mortality tables were issued in 2008, for use beginning in 2008. Those tables were based on a study of mortality experience of pension plan participants covering the years 1990–1994 that was published in 2000. Since that time, studies have shown that people are living longer. For example, a study that RPEC published in 2014 indicates that the mortality tables issued under the 2008 general mortality table regulations no longer reflect the actual mortality experience of pension plan participants and projected trends in that experience. In accordance with section 430(h)(3)(B), the Secretary is required to revise the mortality tables in the existing regulations as a result of these changes in the actual mortality experience and projected trends in that experience. In addition, changes in the existing regulations regarding substitute mortality tables are required under the provisions of the Bipartisan Budget Act of 2015.

2. Affected Population

The final regulations affect participants in private-sector defined benefit plans and employers sponsoring those plans.

3. Baseline and Summary of Impacts

As required by OMB Circular A–4, the following table summarizes the estimated economic impact of the final regulations. The baseline for this estimate is the mortality tables issued under the existing regulations. Because the new tables reflect the fact that participants are living longer, the primary impact of the final regulations is to increase the reported liability for future benefit payments from pension plans; this higher reported liability will result in higher pension contributions. The higher liability will also result in an increase in PBGC premiums, which are a function of a plan's funded status. Because pension contributions and premiums are deductible from firms' incomes, tax revenues will fall.

As described in the effective date discussion in section II.D of the Explanation of Provisions portion of this preamble, these regulations include an option for a plan sponsor that is not using plan-specific mortality tables to delay the application of the new tables in certain circumstances. Because it is difficult to predict how many plan sponsors will utilize this option, the following tables provide a range of estimates of the economic impact of these regulations. The first row of numbers in the tables, labeled ''full take-up amount,'' is based on the assumption that all plan sponsors will use the option to delay the application of the new mortality tables; the second row of numbers, labeled ''no take-up amount,'' is based on the assumption that no plan sponsors will use the option to delay application of the new mortality tables. As noted in the effective date discussion in section II.D of the Explanation of Provisions portion of this preamble, the use of this option will not affect the mortality table used to determine minimum present value under section 417(e).

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Estimated change in tax revenue (in millions of 2017 dollars)										
Full take-up amount	0	−123	−499	−914	−1,170	−1,278	−1,216	−1,081	−807	−353
No take-up amount	−84	−362	−717	−1,025	−1,241	−1,314	−1,238	−1,042	−604	−228

Present Value[29] with full take-up of delay option (3% Discount Rate): −$6,372 million
Present Value with no take-up of delay option (3% Discount Rate): −$6,821 million
Present Value with full take-up of delay option (7% Discount Rate): −$5,245 million
Present Value with no take-up of delay option (7% Discount Rate): −$5,718 million
Annualized Estimate with full take-up of delay option (3% Discount Rate): −$747 million
Annualized Estimate with no take-up of delay option (3% Discount Rate): −$800 million
Annualized Estimate with full take-up of delay option (7% Discount Rate): −$747 million
Annualized Estimate with no take-up of delay option (7% Discount Rate): −$814 million

Estimated change in contributions (in millions of 2017 dollars)										
Full take-up amount	0	2,933	4,873	6,071	6,574	6,069	5,322	3,667	750	407
No take-up amount	2,151	3,631	5,418	6,391	6,694	6,194	5.373	1,751	815	797

Present Value with full take-up of delay option (3% Discount Rate): $32,417 million
Present Value with no take-up of delay option (3% Discount Rate): $35,100 million
Present Value with full take-up of delay option (7% Discount Rate): $27,784 million
Present Value with no take-up of delay option (7% Discount Rate): $30,595 million
Annualized Estimate with full take-up of delay option (3% Discount Rate): $3,800 million
Annualized Estimate with no take-up of delay option (3% Discount Rate): $4,115 million
Annualized Estimate with full take-up of delay option (7% Discount Rate): $3,956 million
Annualized Estimate with no take-up of delay option (7% Discount Rate): $4,356 million

Estimated change in PBGC premiums (in millions of 2017 dollars)										
Full take-up amount	0	293	287	187	91	0	0	0	0	81
No take-up amount	293	287	280	183	89	0	0	0	0	80

Present Value with full take-up of delay option (3% Discount Rate): 869 million
Present Value with no take-up of delay option (3% Discount Rate): 1,143 million
Present Value with full take-up of delay option (7% Discount Rate): $791 million
Present Value with no take-up of delay option (7% Discount Rate): $1,067 million
Annualized Estimate with full take-up of delay option (3% Discount Rate): $102 million

participants and projected trends in that experience. In prescribing those mortality tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans.

[29] The present values are discounted to the beginning of 2019.

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027

Annualized Estimate with no take-up of delay option (3% Discount Rate): $134 million
Annualized Estimate with full take-up of delay option (7% Discount Rate): $113 million
Annualized Estimate with no take-up of delay option (7% Discount Rate): $152 million

For pension payments that are paid over a retiree's lifetime, the actual liability will depend on how long the retiree actually lives, and the impact of reflecting longer life expectancies in the calculation of present values under these regulations will merely accelerate the time when additional contributions attributable to longer lifetimes will need to be made. For pension payments that are lump-sum settlements in lieu of lifetime payments, the new tables will increase the amount of the lump sum. If the plan has a lump sum-based benefit formula, such as a cash balance plan, there will be no impact on the amount of a lump sum, but the optional annuity may be smaller.[30] However, it is difficult to quantify the impact of these changes.

4. Cost Associated With the Regulation

Substantially all of the amounts involved (decreased tax revenue, increased plan contributions and PBGC premiums) constitute transfer payments, rather than costs. This is because these amounts are monetary payments from one entity to another that do not affect total resources available to society.

We believe that the incremental administrative costs to implement this regulation are negligible, because plan sponsors would have to incur the same costs to update their plan administration software to reflect the new mortality tables under these regulations as they would incur in implementing the annual update to the mortality tables that would apply in the absence of these regulations. Moreover, the specific mortality rates used to calculate benefits for individuals normally are not provided to individual plan participants, so there will be no need to distribute information about the new mortality tables. Rather, plan sponsors and administrators provide individual participants who are considering retiring in the near future with individualized estimates of their benefits and that process is not dependent on the specific mortality rates used to determine benefits under the plan. Furthermore, Treasury and the IRS are issuing these regulations at a similar time of year as mortality tables were issued in prior years (and close in time to the issuance of the earliest interest rates that may be used in calculating the amount of a lump sum benefit to be distributed during a plan year beginning in 2018). In other words, these costs are included in the baseline of the analysis, not as new incremental costs associated with this rulemaking.

In terms of the use of the mortality tables for purposes of applying the funding requirements of section 430, these regulations (like the current regulations) permit actuaries to use static mortality tables that approximate the present value determined using the generational mortality tables. Even if a plan's actuary chooses to use generational mortality tables (including plan-specific mortality tables) instead of the static mortality tables, actuarial software capable of applying that approach (including generational mortality tables determined using mortality improvement rates that vary by both age and calendar year) should be readily available, as such generational mortality tables determined using varying mortality improvement rates have been used routinely for financial reporting purposes by large employers since the Mortality Improvement Scale MP–2014 Report was issued in 2014. In addition, these regulations permit any previously approved plan-specific mortality tables to continue to be used for the duration of the original approval period. Accordingly, any additional cost as a result of the issuance of these regulations should be negligible.

[30] The optional annuity may be smaller because, when converting the lump sum in which the participant's benefit is stated under the plan to an stream of annuity payments for the life of the participant (and the life of the participant's spouse if applicable), the lifetime(s) over which the payments must be paid will generally be assumed to be longer if the new tables are used for this purpose rather than the prior tables. To pay a fixed sum over a longer period, the amount of the periodic payments must be reduced. However, a plan is not required to use these tables for this purpose and a recent study indicates that relatively few participants take an annuity distribution from plans with lump sum based benefit formulas See Sudipto Banerjee, Ph.D., Employee Benefits Research Institute, *Issue Brief: Annuity and Lump-Sum Decisions in Defined Benefit Plans: The Role of Plan Rules,* January 2013, *available at https://www.ebri.org/pdf/briefspdf/EBRI_IB_01-13.No381.LSDs2.pdf.*

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It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies to all employers that sponsor defined benefit plans regardless of size. As stated above, this rule implements the statutorily-required updates and any compliance costs related to this rule are small and are consistent with previously issued annual updates.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S.F. Marshall of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from Treasury and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.430(h)(3)–1 is revised to read as follows:

§ 1.430(h)(3)–1 Mortality tables used to determine present value.

(a) *Basis for mortality tables*—(1) *In general.* Pursuant to section 430(h)(3)(A), this section provides generally applicable mortality tables that are used to determine present value for purposes of section 430, and rules regarding the use of those mortality tables. Either the generational mortality tables under paragraph (a)(2) of this section or the static mortality tables under paragraph (a)(3) of this section may be used for a plan. In lieu of using the mortality tables provided under this section, plan-specific substitute mortality tables may be used pursuant to section 430(h)(3)(C), provided that the requirements of § 1.430(h)(3)–2 are satisfied. Mortality tables that may be used with respect to disabled

individuals are provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(2) *Generational mortality tables*—(i) *In general*—(A) *Use of generational mortality tables.* The generational mortality tables that are permitted to be used under section 430(h)(3)(A) and paragraph (a)(1) of this section are determined using the base mortality tables described in paragraph (a)(2)(i)(B) of this section and the mortality improvement rates described in paragraph (a)(2)(i)(C) of this section.

(B) *Base mortality tables.* The base mortality tables are set forth in paragraph (d) of this section. The base year for those tables is 2006.

(C) *Mortality improvement rates.* The mortality improvement rates for valuation dates occurring during 2018 are the mortality improvement rates contained in the Mortality Improvement Scale MP–2016 Report (issued by the Retirement Plans Experience Committee (RPEC) of the Society of Actuaries and available at *www.soa.org/Research/Experience-Study/Pension/research-2016-mp.aspx*). For later years, updated mortality improvement rates that take into account new data for mortality improvement trends of the general population will be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(D) *Application of mortality improvement rates.* Under the generational mortality tables described in this paragraph (a)(2), the probability of an individual's death at a particular age in the future is determined as the individual's base mortality rate that applies at that age (that is, the applicable mortality rate from the table set forth in paragraph (d) of this section for that age, gender, and status as an annuitant or a nonannuitant) multiplied by the cumulative mortality improvement factor for the individual's gender and for that age for the period from 2006 through the calendar year in which the individual is projected to reach the particular age. Paragraph (a)(2)(ii) of this section shows how the base mortality tables in paragraph (d) of this section and the mortality improvement rates for valuation dates occurring during 2018 are combined to determine projected mortality rates.

(E) *Cumulative mortality improvement factor.* The cumulative mortality improvement factor for an age and gender for a period is the product of the annual mortality improvement factors for that age and gender for each year within that period.

(F) *Annual mortality improvement factor.* The annual mortality improvement factor for an age and gender for a year is 1 minus the mortality improvement rate that applies for that age and gender for that year.

(ii) *Example of calculation*—(A) *Calculation of mortality rate.* The mortality rate for 2018 that is applied to male annuitants who are age 66 in 2018 is equal to the product of the mortality rate for 2006 that applied to male annuitants who were age 66 in 2006 (0.013855) and the cumulative mortality improvement factor for age 66 males from 2006 to 2018. The cumulative mortality improvement factor for age 66 males for the period from 2006 to 2018 is 0.8929, and the mortality rate for 2018 for male annuitants who are age 66 in that year would be 0.012371, as shown in the following table.

Calendar year	Scale MP–2016 mortality improvement rate	Annual mortality improvement factor (1- scale MP–2016 rate)	Cumulative mortality improvement factor	Mortality rate
2006	n/a	n/a	n/a	0.013855
2007	0.0237	0.9763	0.9763	.....
2008	0.0211	0.9789	0.9557	.....
2009	0.0180	0.9820	0.9385	.....
2010	0.0142	0.9858	0.9252	.....
2011	0.0099	0.9901	0.9160	.....
2012	0.0053	0.9947	0.9112	.....
2013	0.0043	0.9957	0.9072	.....
2014	0.0035	0.9965	0.9041	.....
2015	0.0030	0.9970	0.9014	.....
2016	0.0028	0.9972	0.8988	.....
2017	0.0030	0.9970	0.8961	.....
2018	0.0036	0.9964	0.8929	0.012371

(B) *Probability of survival for an individual.* After the projected mortality rates are derived for each age for each year, the rates are used to calculate the present value of a benefit stream that depends on the probability of survival year-by-year. For example, for purposes of calculating the present value (for a 2018 valuation date) of future payments in a benefit stream payable for a male annuitant who is age 66 in 2018, the probability of survival for the annuitant is based on the mortality rate for a male annuitant who is age 66 in 2018 (0.012371), and the projected mortality rate for a male annuitant who will be age 67 in 2019 (0.013302), age 68 in 2020 (0.014321), and so on.

(3) *Static mortality tables.* The static mortality tables that are permitted to be used under section 430(h)(3)(A) and paragraph (a)(1) of this section are updated annually by the IRS according to the methodology described in paragraph (c)(2) of this section. Paragraph (e) of this section sets forth static tables that are permitted to be used for valuation dates in 2018. For valuation dates in later years, static mortality tables will be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(b) *Use of the tables*—(1) *Separate tables for annuitants and nonannuitants*—(i) *In general.* Separate tables are provided for use for annuitants and nonannuitants. The nonannuitant mortality table is applied to determine the probability of survival for a nonannuitant for the period before the nonannuitant is projected to commence receiving benefits. The annuitant mortality table is applied to determine the present value of benefits for each annuitant. In addition, the annuitant mortality table is applied for each nonannuitant with respect to each assumed commencement of benefits for the period beginning with that assumed

commencement. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits, and a nonannuitant means a plan participant who has not yet commenced receiving benefits (for example, an active employee or a terminated vested participant). A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit that has commenced and treated as a nonannuitant with respect to the balance of the benefit. In addition, with respect to a beneficiary of a participant, the annuitant mortality table applies for the period beginning with each assumed commencement of benefits for the participant. If the participant has died (or to the extent the participant is assumed to die before commencing benefits), the annuitant mortality table applies with respect to the beneficiary for the period beginning with each assumed commencement of benefits for the beneficiary.

(ii) *Examples of calculation using separate annuitant and nonannuitant tables.* With respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target is determined using the nonannuitant mortality table for the period before the participant attains age 55 (so that, if the static mortality tables are used pursuant to paragraph (a)(3) of this section, the probability of an active male participant living from age 45 to age 55 using the table that applies for a valuation date in 2018 is 0.988857) and using the annuitant mortality table for the period ages 55 and above. Similarly, for a 45-year-old terminated vested participant who is projected to commence an annuity at age 65, the funding target is determined using the nonannuitant mortality table for the period before the participant attains age 65 and using the annuitant mortality table for ages 65 and above.

(2) *Small plan tables.* If static mortality tables are used pursuant to paragraph (a)(3) of this section, as an alternative to the separate static tables specified for annuitants and nonannuitants pursuant to paragraph (b)(1) of this section, combined static tables that apply the same mortality rates to both annuitants and nonannuitants are permitted to be used for a small plan. For this purpose, a small plan is defined as a plan with 500 or fewer total participants (including both active and inactive participants and beneficiaries of deceased participants) on the valuation date. The combined static tables that are permitted to be used for small plans pursuant to this paragraph (b)(2) are constructed from the separate nonannuitant and annuitant static mortality tables using the weighting factors for small plans that are set forth in paragraph (d) of this section. The weighting factors are applied to develop these combined static tables using the following equation: Combined mortality rate = [nonannuitant rate * (1 − weighting factor)] + [annuitant rate * weighting factor].

(c) *Static tables*—(1) *Source of rates.* The static mortality tables that are used pursuant to paragraph (a)(3) of this section are determined using the base mortality tables described in paragraph (a)(2)(i)(B) of this section taking into account the mortality improvement rates described in paragraph (a)(2)(i)(C) of this section, in accordance with the rules of paragraph (c)(3) of this section.

(2) *Selection of static tables.* The static mortality tables that are used for a valuation date are the static mortality tables for the calendar year that contains the valuation date.

(3) *Projection of mortality improvements*—(i) *General rule.* Except as provided in paragraph (c)(3)(iii) of this section, the static mortality tables for a calendar year are determined by multiplying the applicable mortality rate for each age from the base mortality tables by both—

(A) The cumulative mortality improvement factor (determined under the rules of paragraph (a)(2) of this section) for the period from 2006 through that calendar year; and

(B) The cumulative mortality improvement factor (determined under the rules of paragraph (a)(2) of this section) for the period beginning in that calendar year and continuing beyond that calendar year for the number of years in the projection period described in paragraph (c)(3)(ii) of this section.

(ii) *Projection period for static mortality tables*—(A) *In general.* The projection period is 8 years for males and 9 years for females, as adjusted based on age as provided in paragraph (c)(3)(ii)(B) of this section.

(B) *Age adjustment.* For ages below 80, the projection period is increased by 1 year for each year below age 80. For ages above 80, the projection period is reduced (but not below zero) by ⅓ year for each year above 80.

(iii) *Fractional projection periods.* If for an age the number of years in the projection period determined under this paragraph (c)(3) is not a whole number, then the mortality rate for that age is determined by using linear interpolation between—

(A) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next lower whole number; and

(B) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next higher whole number.

(iv) *Example.* The following example illustrates how the mortality rates in the static mortality tables issued under the provisions of this paragraph (c) are calculated:

Example. At age 85, the projection period for a male is 6⅓ years (8 years minus ⅓ year for each of the 5 years above age 80). For a valuation date in 2018, the mortality rate in the static mortality table for an 85-year-old male is based on a projection of mortality improvement for 6⅓ years beyond 2018. Under paragraph (c)(3)(iii) of this section, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2018 is ⅔ times the projected mortality rate for a male annuitant that age in 2024 plus ⅓ times the projected mortality rate for a male annuitant that age in 2025. Accordingly, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2018 is 0.075196 (⅔ times the projected mortality rate for an 85-year old male annuitant in 2024 (0.075447) plus ⅓ times the projected mortality rate for an 85-year old male annuitant in 2025 (0.074693)).

(d) *Base mortality tables.* The following are the base mortality tables. The base year for these tables is 2006.

Age	Males			Females		
	Non-annuitant	Annuitant	Weighting factor for small plans	Non-annuitant	Annuitant	Weighting factor for small plans
0	0.008878	0.008878	0	0.007278	0.007278	0
1	0.000515	0.000515	0	0.000451	0.000451	0
2	0.000348	0.000348	0	0.000295	0.000295	0
3	0.000289	0.000289	0	0.000220	0.000220	0

Age	Males			Females		
	Non-annuitant	Annuitant	Weighting factor for small plans	Non-annuitant	Annuitant	Weighting factor for small plans
4	0.000225	0.000225	0	0.000165	0.000165	0
5	0.000197	0.000197	0	0.000149	0.000149	0
6	0.000177	0.000177	0	0.000137	0.000137	0
7	0.000156	0.000156	0	0.000127	0.000127	0
8	0.000132	0.000132	0	0.000117	0.000117	0
9	0.000107	0.000107	0	0.000109	0.000109	0
10	0.000090	0.000090	0	0.000102	0.000102	0
11	0.000095	0.000095	0	0.000105	0.000105	0
12	0.000142	0.000142	0	0.000121	0.000121	0
13	0.000187	0.000187	0	0.000137	0.000137	0
14	0.000230	0.000230	0	0.000151	0.000151	0
15	0.000274	0.000274	0	0.000165	0.000165	0
16	0.000318	0.000318	0	0.000177	0.000177	0
17	0.000364	0.000364	0	0.000187	0.000187	0
18	0.000412	0.000412	0	0.000196	0.000196	0
19	0.000463	0.000463	0	0.000202	0.000202	0
20	0.000510	0.000510	0	0.000202	0.000202	0
21	0.000552	0.000552	0	0.000197	0.000197	0
22	0.000587	0.000587	0	0.000191	0.000191	0
23	0.000599	0.000599	0	0.000190	0.000190	0
24	0.000594	0.000594	0	0.000188	0.000188	0
25	0.000545	0.000545	0	0.000186	0.000186	0
26	0.000510	0.000510	0	0.000186	0.000186	0
27	0.000486	0.000486	0	0.000188	0.000188	0
28	0.000472	0.000472	0	0.000192	0.000192	0
29	0.000468	0.000468	0	0.000198	0.000198	0
30	0.000470	0.000470	0	0.000209	0.000209	0
31	0.000480	0.000480	0	0.000222	0.000222	0
32	0.000495	0.000495	0	0.000238	0.000238	0
33	0.000514	0.000514	0	0.000257	0.000257	0
34	0.000534	0.000534	0	0.000278	0.000278	0
35	0.000557	0.000557	0	0.000301	0.000301	0
36	0.000581	0.000581	0	0.000325	0.000325	0
37	0.000611	0.000611	0	0.000355	0.000355	0
38	0.000648	0.000648	0	0.000389	0.000389	0
39	0.000694	0.000694	0	0.000428	0.000428	0
40	0.000750	0.000750	0	0.000471	0.000471	0
41	0.000814	0.000823	.0045	0.000518	0.000515	0
42	0.000890	0.000969	.0091	0.000570	0.000603	0
43	0.000982	0.001188	.0136	0.000628	0.000735	0
44	0.001088	0.001480	.0181	0.000691	0.000911	0
45	0.001207	0.001846	.0226	0.000758	0.001131	.0084
46	0.001342	0.002285	.0272	0.000831	0.001395	.0167
47	0.001487	0.002797	.0317	0.000908	0.001703	.0251
48	0.001643	0.003382	.0362	0.000986	0.002055	.0335
49	0.001807	0.004040	.0407	0.001065	0.002451	.0419
50	0.001979	0.004771	.0453	0.001151	0.002891	.0502
51	0.002159	0.005059	.0498	0.001242	0.002993	.0586
52	0.002351	0.005343	.0686	0.001344	0.003124	.0744
53	0.002539	0.005592	.0953	0.001458	0.003291	.0947
54	0.002741	0.005839	.1288	0.001588	0.003499	.1189
55	0.002967	0.006102	.2066	0.001735	0.003755	.1897
56	0.003231	0.006399	.3173	0.001902	0.004065	.2857
57	0.003548	0.006746	.3780	0.002091	0.004435	.3403
58	0.003932	0.007155	.4401	0.002302	0.004869	.3878
59	0.004396	0.007639	.4986	0.002537	0.005373	.4360
60	0.004954	0.008211	.5633	0.002795	0.005942	.4954
61	0.005616	0.008878	.6338	0.003080	0.006581	.5805
62	0.006392	0.009646	.7103	0.003388	0.007283	.6598
63	0.007291	0.010523	.7902	0.003724	0.008043	.7520
64	0.008320	0.011514	.8355	0.004089	0.008870	.8043
65	0.009486	0.012621	.8832	0.004482	0.009760	.8552
66	0.010668	0.013855	.9321	0.005004	0.010731	.9118
67	0.011973	0.015221	.9510	0.005575	0.011790	.9367
68	0.013414	0.016736	.9639	0.006205	0.012952	.9523
69	0.015006	0.018421	.9714	0.006898	0.014226	.9627
70	0.016761	0.020288	.9740	0.007662	0.015628	.9661
71	0.018690	0.022348	.9766	0.008507	0.017170	.9695
72	0.020824	0.024638	.9792	0.009438	0.018861	.9729
73	0.023176	0.027176	.9818	0.010470	0.020723	.9763

Age	Males			Females		
	Non-annuitant	Annuitant	Weighting factor for small plans	Non-annuitant	Annuitant	Weighting factor for small plans
74	0.025770	0.029992	.9844	0.011615	0.022780	.9797
75	0.028623	0.033113	.9870	0.012887	0.025057	.9830
76	0.031761	0.036585	.9896	0.014301	0.027590	.9864
77	0.035214	0.040457	.9922	0.015885	0.030438	.9898
78	0.039007	0.044778	.9948	0.017656	0.033653	.9932
79	0.043169	0.049605	.9974	0.019639	0.037296	.9966
80	0.047750	0.055022	1.0	0.021859	0.041440	1.0
81	0.049804	0.061087	1.0	0.023791	0.046181	1.0
82	0.053911	0.067902	1.0	0.027655	0.051564	1.0
83	0.060072	0.075550	1.0	0.033451	0.057714	1.0
84	0.068286	0.084162	1.0	0.041179	0.064709	1.0
85	0.078554	0.093775	1.0	0.050838	0.072601	1.0
86	0.090876	0.104507	1.0	0.062429	0.081490	1.0
87	0.105251	0.116487	1.0	0.075952	0.091444	1.0
88	0.121680	0.129770	1.0	0.091407	0.102470	1.0
89	0.140162	0.144470	1.0	0.108794	0.114635	1.0
90	0.160698	0.160698	1.0	0.128113	0.128113	1.0
91	0.177741	0.177741	1.0	0.142619	0.142619	1.0
92	0.195154	0.195154	1.0	0.157939	0.157939	1.0
93	0.212642	0.212642	1.0	0.173886	0.173886	1.0
94	0.230055	0.230055	1.0	0.190319	0.190319	1.0
95	0.247257	0.247257	1.0	0.207191	0.207191	1.0
96	0.265940	0.265940	1.0	0.225057	0.225057	1.0
97	0.284940	0.284940	1.0	0.243507	0.243507	1.0
98	0.304432	0.304432	1.0	0.262587	0.262587	1.0
99	0.324272	0.324272	1.0	0.282171	0.282171	1.0
100	0.344364	0.344364	1.0	0.302162	0.302162	1.0
101	0.364420	0.364420	1.0	0.322282	0.322282	1.0
102	0.384058	0.384058	1.0	0.342371	0.342371	1.0
103	0.403188	0.403188	1.0	0.362210	0.362210	1.0
104	0.421533	0.421533	1.0	0.381534	0.381534	1.0
105	0.438903	0.438903	1.0	0.400321	0.400321	1.0
106	0.455492	0.455492	1.0	0.418418	0.418418	1.0
107	0.470810	0.470810	1.0	0.435390	0.435390	1.0
108	0.484965	0.484965	1.0	0.451459	0.451459	1.0
109	0.498023	0.498023	1.0	0.466408	0.466408	1.0
110	0.509768	0.509768	1.0	0.480123	0.480123	1.0
111	0.512472	0.512472	1.0	0.492664	0.492664	1.0
112	0.509296	0.509296	1.0	0.503970	0.503970	1.0
113	0.506193	0.506193	1.0	0.507361	0.507361	1.0
114	0.503061	0.503061	1.0	0.503564	0.503564	1.0
115	0.500000	0.500000	1.0	0.500000	0.500000	1.0
116	0.500000	0.500000	1.0	0.500000	0.500000	1.0
117	0.500000	0.500000	1.0	0.500000	0.500000	1.0
118	0.500000	0.500000	1.0	0.500000	0.500000	1.0
119	0.500000	0.500000	1.0	0.500000	0.500000	1.0
120	1.000000	1.000000	1.0	1.000000	1.000000	1.0

(e) *Static tables for 2018.* The following static mortality tables are used pursuant to paragraph (a)(3) of this section for determining present value or making any computation under section 430 with respect to valuation dates occurring during 2018.

Age	Males			Females		
	Non-annuitant	Annuitant	Optional combined table for small plans	Non-annuitant	Annuitant	Optional combined table for small plans
0	0.002420	0.002420	0.002420	0.002234	0.002234	0.002234
1	0.000142	0.000142	0.000142	0.000140	0.000140	0.000140
2	0.000097	0.000097	0.000097	0.000092	0.000092	0.000092
3	0.000081	0.000081	0.000081	0.000070	0.000070	0.000070
4	0.000064	0.000064	0.000064	0.000053	0.000053	0.000053
5	0.000056	0.000056	0.000056	0.000048	0.000048	0.000048
6	0.000051	0.000051	0.000051	0.000045	0.000045	0.000045
7	0.000046	0.000046	0.000046	0.000042	0.000042	0.000042
8	0.000039	0.000039	0.000039	0.000039	0.000039	0.000039

Age	Males			Females		
	Non-annuitant	Annuitant	Optional combined table for small plans	Non-annuitant	Annuitant	Optional combined table for small plans
9	0.000032	0.000032	0.000032	0.000037	0.000037	0.000037
10	0.000027	0.000027	0.000027	0.000035	0.000035	0.000035
11	0.000029	0.000029	0.000029	0.000036	0.000036	0.000036
12	0.000044	0.000044	0.000044	0.000042	0.000042	0.000042
13	0.000058	0.000058	0.000058	0.000048	0.000048	0.000048
14	0.000072	0.000072	0.000072	0.000053	0.000053	0.000053
15	0.000087	0.000087	0.000087	0.000059	0.000059	0.000059
16	0.000102	0.000102	0.000102	0.000064	0.000064	0.000064
17	0.000118	0.000118	0.000118	0.000068	0.000068	0.000068
18	0.000135	0.000135	0.000135	0.000072	0.000072	0.000072
19	0.000153	0.000153	0.000153	0.000075	0.000075	0.000075
20	0.000170	0.000170	0.000170	0.000076	0.000076	0.000076
21	0.000192	0.000192	0.000192	0.000078	0.000078	0.000078
22	0.000214	0.000214	0.000214	0.000080	0.000080	0.000080
23	0.000229	0.000229	0.000229	0.000084	0.000084	0.000084
24	0.000238	0.000238	0.000238	0.000087	0.000087	0.000087
25	0.000230	0.000230	0.000230	0.000090	0.000090	0.000090
26	0.000226	0.000226	0.000226	0.000094	0.000094	0.000094
27	0.000226	0.000226	0.000226	0.000099	0.000099	0.000099
28	0.000230	0.000230	0.000230	0.000105	0.000105	0.000105
29	0.000238	0.000238	0.000238	0.000111	0.000111	0.000111
30	0.000249	0.000249	0.000249	0.000120	0.000120	0.000120
31	0.000263	0.000263	0.000263	0.000130	0.000130	0.000130
32	0.000278	0.000278	0.000278	0.000142	0.000142	0.000142
33	0.000294	0.000294	0.000294	0.000155	0.000155	0.000155
34	0.000309	0.000309	0.000309	0.000168	0.000168	0.000168
35	0.000323	0.000323	0.000323	0.000182	0.000182	0.000182
36	0.000336	0.000336	0.000336	0.000196	0.000196	0.000196
37	0.000350	0.000350	0.000350	0.000213	0.000213	0.000213
38	0.000366	0.000366	0.000366	0.000231	0.000231	0.000231
39	0.000385	0.000385	0.000385	0.000251	0.000251	0.000251
40	0.000410	0.000410	0.000410	0.000273	0.000273	0.000273
41	0.000438	0.000443	0.000438	0.000298	0.000296	0.000298
42	0.000474	0.000516	0.000474	0.000326	0.000344	0.000326
43	0.000518	0.000627	0.000519	0.000358	0.000419	0.000358
44	0.000573	0.000779	0.000577	0.000395	0.000520	0.000395
45	0.000636	0.000973	0.000644	0.000436	0.000651	0.000438
46	0.000712	0.001213	0.000726	0.000484	0.000813	0.000489
47	0.000798	0.001502	0.000820	0.000538	0.001010	0.000550
48	0.000896	0.001844	0.000930	0.000597	0.001245	0.000619
49	0.001005	0.002248	0.001056	0.000661	0.001522	0.000697
50	0.001128	0.002719	0.001200	0.000734	0.001844	0.000790
51	0.001265	0.002963	0.001350	0.000814	0.001961	0.000881
52	0.001418	0.003224	0.001542	0.000903	0.002099	0.000992
53	0.001580	0.003481	0.001761	0.001003	0.002263	0.001122
54	0.001761	0.003751	0.002017	0.001114	0.002454	0.001273
55	0.001964	0.004040	0.002393	0.001235	0.002673	0.001508
56	0.002200	0.004357	0.002884	0.001367	0.002921	0.001811
57	0.002474	0.004704	0.003317	0.001509	0.003200	0.002084
58	0.002796	0.005088	0.003805	0.001661	0.003512	0.002379
59	0.003174	0.005515	0.004341	0.001823	0.003860	0.002711
60	0.003613	0.005989	0.004951	0.001994	0.004238	0.003106
61	0.004122	0.006516	0.005639	0.002181	0.004659	0.003619
62	0.004705	0.007100	0.006406	0.002381	0.005119	0.004188
63	0.005364	0.007742	0.007243	0.002600	0.005616	0.004868
64	0.006111	0.008457	0.008071	0.002842	0.006165	0.005515
65	0.006940	0.009234	0.008966	0.003107	0.006766	0.006236
66	0.007779	0.010103	0.009945	0.003465	0.007430	0.007080
67	0.008697	0.011056	0.010940	0.003863	0.008170	0.007897
68	0.009709	0.012114	0.012027	0.004308	0.008993	0.008770
69	0.010836	0.013302	0.013231	0.004806	0.009912	0.009722
70	0.012093	0.014637	0.014571	0.005366	0.010945	0.010756
71	0.013486	0.016126	0.016064	0.006001	0.012111	0.011925
72	0.015044	0.017799	0.017742	0.006711	0.013412	0.013230
73	0.016794	0.019693	0.019640	0.007521	0.014886	0.014711
74	0.018751	0.021823	0.021775	0.008439	0.016552	0.016387
75	0.020950	0.024237	0.024194	0.009485	0.018443	0.018291
76	0.023428	0.026986	0.026949	0.010678	0.020600	0.020465
77	0.026183	0.030081	0.030051	0.012035	0.023061	0.022949
78	0.029308	0.033645	0.033622	0.013582	0.025888	0.025804

Age	Males			Females		
	Non-annuitant	Annuitant	Optional combined table for small plans	Non-annuitant	Annuitant	Optional combined table for small plans
79	0.032774	0.037661	0.037648	0.015347	0.029144	0.029097
80	0.036705	0.042295	0.042295	0.017347	0.032886	0.032886
81	0.038556	0.047291	0.047291	0.019058	0.036992	0.036992
82	0.042087	0.053009	0.053009	0.022345	0.041662	0.041662
83	0.047283	0.059466	0.059466	0.027251	0.047017	0.047017
84	0.054248	0.066860	0.066860	0.033811	0.053130	0.053130
85	0.062990	0.075196	0.075196	0.042053	0.060056	0.060056
86	0.073605	0.084646	0.084646	0.052009	0.067888	0.067888
87	0.086115	0.095308	0.095308	0.063725	0.076724	0.076724
88	0.100513	0.107196	0.107196	0.077205	0.086549	0.086549
89	0.116840	0.120431	0.120431	0.092462	0.097426	0.097426
90	0.135087	0.135087	0.135087	0.109484	0.109484	0.109484
91	0.150610	0.150610	0.150610	0.122541	0.122541	0.122541
92	0.166534	0.166534	0.166534	0.136397	0.136397	0.136397
93	0.182546	0.182546	0.182546	0.150811	0.150811	0.150811
94	0.198598	0.198598	0.198598	0.165818	0.165818	0.165818
95	0.214442	0.214442	0.214442	0.181360	0.181360	0.181360
96	0.232944	0.232944	0.232944	0.198746	0.198746	0.198746
97	0.251903	0.251903	0.251903	0.216930	0.216930	0.216930
98	0.271612	0.271612	0.271612	0.235921	0.235921	0.235921
99	0.291889	0.291889	0.291889	0.255617	0.255617	0.255617
100	0.312680	0.312680	0.312680	0.275938	0.275938	0.275938
101	0.333720	0.333720	0.333720	0.296628	0.296628	0.296628
102	0.354570	0.354570	0.354570	0.317471	0.317471	0.317471
103	0.375136	0.375136	0.375136	0.338385	0.338385	0.338385
104	0.395172	0.395172	0.395172	0.358868	0.358868	0.358868
105	0.413945	0.413945	0.413945	0.379183	0.379183	0.379183
106	0.432145	0.432145	0.432145	0.398878	0.398878	0.398878
107	0.449197	0.449197	0.449197	0.417703	0.417703	0.417703
108	0.465497	0.465497	0.465497	0.435384	0.435384	0.435384
109	0.480869	0.480869	0.480869	0.452108	0.452108	0.452108
110	0.495080	0.495080	0.495080	0.467928	0.467928	0.467928
111	0.500557	0.500557	0.500557	0.482562	0.482562	0.482562
112	0.500454	0.500454	0.500454	0.496164	0.496164	0.496164
113	0.500352	0.500352	0.500352	0.502110	0.502110	0.502110
114	0.500201	0.500201	0.500201	0.500952	0.500952	0.500952
115	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
116	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
117	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
118	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
119	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

(f) *Effective/applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to plan years beginning or after January 1, 2018.

(2) *Option to apply prior regulations in certain circumstances.* For a plan for which substitute mortality tables are not used pursuant to § 1.430(h)(3)–2 for a plan year beginning during 2018, mortality tables determined in accordance with § 1.430(h)(3)–1 as in effect on December 31, 2017 (as contained in 26 CFR part 1 revised April 1, 2017) may be used for purposes of applying the rules of section 430 for a valuation date occurring during 2018 if the plan sponsor—

(i) Concludes that the use of mortality tables determined in accordance with this section for the plan year would be administratively impracticable or would result in an adverse business impact that is greater than *de minimis;* and

(ii) Informs the actuary of the intent to apply the option under this paragraph (f)(2).

■ **Par. 3.** Section 1.430(h)(3)–2 is revised to read as follows:

§ 1.430(h)(3)–2 Plan-specific substitute mortality tables used to determine present value.

(a) *In general.* This section provides rules for the use of substitute mortality tables under section 430(h)(3)(C) in determining any present value or making any computation under section 430 in accordance with § 1.430(h)(3)–1(a)(1). To use substitute mortality tables for a plan, a plan sponsor must first obtain approval to use the tables in accordance with the procedures described in paragraph (b) of this section. Paragraph (c) of this section provides rules for the development of substitute mortality tables, including guidelines providing that a plan must have either fully or partially credible mortality information in order to use substitute mortality tables. Paragraph (d) of this section describes the requirements for full credibility. Paragraph (e) of this section describes the requirements for partial credibility. Paragraph (f) of this section provides special rules for newly-affiliated plans. Paragraph (g) of this section specifies the effective date and applicability date of this section. The Commissioner may, in revenue rulings and procedures, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), provide additional guidance regarding approval and use of substitute mortality

tables under section 430(h)(3)(C) and related matters.

(b) *Procedures for obtaining approval to use substitute mortality tables*—(1) *Written request for approval to use substitute mortality tables*—(i) *General requirements.* To use substitute mortality tables, a plan sponsor must first submit a written request to the Commissioner demonstrating that those substitute mortality tables meet the requirements of section 430(h)(3)(C) and this section. This request must specify the first plan year, and the term of years (not more than 10), for which the tables are to apply.

(ii) *Time for written request.* Substitute mortality tables may not be used for a plan year unless the plan sponsor submits the written request described in paragraph (b)(1)(i) of this section at least 7 months before the first day of the first plan year for which the substitute mortality tables are to apply.

(2) *Commissioner's review of request*—(i) *In general.* During the 180-day period that begins on the date the plan sponsor submits a request for approval to use substitute mortality tables for a plan pursuant to this section, the Commissioner will determine whether the request for approval to use substitute mortality tables satisfies the requirements of this section (including any published guidance issued pursuant to paragraph (a) of this section), and will either approve or deny the request. The Commissioner will deny a request if the request fails to meet the requirements of this section or if the Commissioner determines that a substitute mortality table does not reflect the actual mortality experience of the applicable population.

(ii) *Request for additional information.* The Commissioner may request additional information with respect to the submission and deny a request to use substitute mortality tables if the additional information is not provided in a timely manner.

(iii) *Deemed approval.* Except as provided in paragraph (b)(2)(iv) of this section, if the Commissioner does not issue a denial within the 180-day review period, the request is deemed to have been approved.

(iv) *Extension of time permitted.* The Commissioner and a plan sponsor may, before the expiration of the 180-day review period, agree in writing to extend that period.

(c) *Development of substitute mortality tables*—(1) *Substitute mortality tables must be used for all plans in controlled group*—(i) *General rule.* Except as otherwise provided in this paragraph (c), substitute mortality tables are permitted to be used for a plan for a plan year only if, for that plan year (or any portion of that plan year), substitute mortality tables are also approved and used for each other pension plan subject to the requirements of section 430 that is maintained by the plan sponsor and by each member of the plan sponsor's controlled group. For purposes of this section, the term controlled group means any group that is treated as a single employer under paragraph (b), (c), (m), or (o) of section 414. See paragraph (c)(7) of this section for special rules applicable to multiple-employer plans.

(ii) *Treatment of plans without credible mortality information.* The rule of paragraph (c)(1)(i) of this section does not prohibit use of substitute mortality tables for one plan for a plan year if the only other plan or plans maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) for which substitute mortality tables are not used are too small to have fully or partially credible mortality information for the plan year. For this purpose, the demonstration that neither males nor females under a plan have credible mortality information for a plan year must be made by analyzing the actual number of deaths over a period that is the same length as the longest experience study period used for any plan within the controlled group and that ends less than three years before the first day of the plan year.

(2) *Mortality experience requirements*—(i) *In general.* Substitute mortality tables must reflect the actual mortality experience of the pension plan for which the tables will be used, and that mortality experience must consist of credible mortality information as described in paragraph (c)(2)(ii) of this section. Separate substitute mortality tables must be established for each gender and, except as provided in paragraph (d)(6) of this section, a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality information for that gender. See paragraph (d)(5) of this section for rules permitting the use of substitute mortality tables for separate populations within a gender in certain circumstances.

(ii) *Credible mortality information*—(A) *In general.* A plan has credible mortality information for a gender if and only if the mortality experience with respect to that gender satisfies the requirement for either full credibility (as described in paragraph (d) of this section) or partial credibility (as described in paragraph (e) of this section).

(B) *Simplified rule.* Whether there is credible mortality information for a gender may be determined by only taking into account people who are at least age 50 and less than age 100. If there is credible mortality information for a gender using this simplified rule, the entire gender (not just those who are at least age 50 and less than age 100) has credible mortality information.

(iii) *Gender without credible mortality information*—(A) *In general.* If, for the first plan year substitute mortality tables will be used for a plan, one gender has credible mortality information but the other gender does not have credible mortality information, then substitute mortality tables are established for the gender that has credible mortality information, and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality information. For a subsequent plan year, the plan sponsor may continue to use substitute mortality tables for the gender with credible mortality information without using substitute mortality tables for the other gender only if the other gender continues to lack credible mortality information for that subsequent plan year.

(B) *Demonstration of lack of credible mortality information for a gender.* The demonstration that a gender does not have credible mortality information (that is, the individuals of that gender had fewer than the minimum number of actual deaths to have partial credibility, as described in paragraph (e)(1) of this section) for a plan year must be made by analyzing the actual number of deaths over a period that is the same length as the period for the experience study on which the substitute mortality tables are based and that ends less than three years before the first day of the plan year.

(3) *Determination of substitute mortality tables*—(i) *Requirement to use generational mortality table.* A plan's substitute mortality tables must be generational mortality tables. A plan's substitute mortality tables are determined using the plan's base substitute mortality tables developed pursuant to paragraph (d) or (e) of this section and the mortality improvement factors described in paragraph (c)(3)(ii) of this section.

(ii) *Determination of mortality improvement factors.* The mortality improvement factor for an age and gender is the cumulative mortality improvement factor determined under § 1.430(h)(3)–1(a)(2)(i)(E) for that age and gender for the applicable period. The applicable period is the period beginning with the base year for the

base substitute mortality table determined under paragraph (d) or (e) of this section and ending in the calendar year in which the individual attains the age for which the probability of death is being determined. The base year for the base substitute mortality table is the calendar year that contains the day before the midpoint of the experience study period.

(4) *Disabled individuals.* Under section 430(h)(3)(D), separate mortality tables are permitted to be used for certain disabled individuals. If the separate mortality tables issued under section 430(h)(3)(D) for certain disabled individuals are used, then those disabled individuals are disregarded for all purposes under this section. Thus, if the mortality tables under section 430(h)(3)(D) are used for disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in developing mortality rates for substitute mortality tables under this section.

(5) *Aggregation*—(i) *Permissive aggregation of plans.* A plan sponsor may use the same substitute mortality tables for two or more of its plans provided that the rules of this section are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be based on data collected with respect to those aggregated plans.

(ii) *Required aggregation of plans.* In general, plans are not required to be aggregated for purposes of applying the rules of this section. However, for purposes of this section, a plan is required to be aggregated with any plan that was previously spun off from that plan if a purpose of the spinoff is to avoid the use of substitute mortality tables for any of the plans that were involved in the spinoff.

(iii) *Special rule regarding experience study if aggregated plans have different plan years.* If two or more plans are aggregated pursuant to this paragraph (c)(5) and not all of the plans have the same plan year, then the experience study period may be a period that is not a multiple of 12 months, provided that—

(A) The period over which mortality experience is collected for each plan (the data study period) is a multiple of 12 months and is based on the plan year for that plan;

(B) The data study periods for all of the plans consist of the same number of years;

(C) The data study periods for all of the plans satisfy the experience study period requirements of paragraph (d)(2)(ii) of this section; and

(D) The data study periods for all of the plans have been selected to minimize the total period of time covered by the experience study period by overlapping (to the greatest extent possible) those data study periods.

(6) *Duration of use of tables*—(i) *General rule.* Except as provided in this paragraph (c)(6), substitute mortality tables are used for a plan for the term of consecutive plan years specified in the plan sponsor's written request for approval to use such tables under paragraph (b)(1) of this section and approved by the Commissioner, or a shorter period prescribed by the Commissioner in the approval to use substitute mortality tables. Following the end of the approved term of use, or following any early termination of use described in this paragraph (c)(6), the mortality tables specified in § 1.430(h)(3)–1 must be used for the plan unless approval under paragraph (b)(1) of this section has been received by the plan sponsor to use substitute mortality tables based on an updated experience study for a further term.

(ii) *Early termination of use of tables.* A plan's substitute mortality tables must not be used beginning with the earliest of—

(A) For a plan using a substitute mortality table for only one gender because of a lack of credible mortality information with respect to the other gender, the first plan year for which there is credible mortality information with respect to the gender that had lacked credible mortality information (unless an approved substitute mortality table is used for that gender);

(B) The first plan year for which the plan fails to satisfy the requirements of paragraph (c)(1) of this section (regarding use of substitute mortality tables for all plans in the controlled group), taking into account the rules of paragraph (f)(3) of this section (regarding the transition period for newly-affiliated plans);

(C) The second plan year following the plan year for which there is a significant change in individuals covered by the plan as described in paragraph (c)(6)(iii) of this section;

(D) The first plan year following the plan year for which a substitute mortality table used for a population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner; or

(E) The date specified in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) in conjunction with a replacement of mortality tables specified under section 430(h)(3)(A) and § 1.430(h)(3)–1 (other than annual updates to the static mortality tables issued pursuant to § 1.430(h)(3)–1(a)(3) or changes to the mortality improvement rates pursuant to § 1.430(h)(3)–1(a)(2)(i)(C)).

(iii) *Significant change in coverage*—(A) *Change in coverage from time of experience study.* For purposes of applying the rules of paragraph (c)(6)(ii)(C) of this section, a significant change in the individuals covered by a substitute mortality table for a plan year occurs if the number of individuals covered by the substitute mortality table for the plan year is less than 80 percent or more than 120 percent of the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

(B) *Change in coverage from time of certification.* For purposes of applying the rules of paragraph (c)(6)(ii)(C) of this section, a significant change in the individuals covered by a substitute mortality table for a plan year occurs if the number of individuals covered by the substitute mortality table for the plan year is less than 80 percent or more than 120 percent of the number of individuals covered by the substitute mortality table in a plan year for which a certification described in paragraph (c)(6)(iii)(A) of this section was made on account of a prior change in coverage. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used by the plan with respect to the covered population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

(7) *Multiple-employer plans*—(i) *General rule.* In the case of a multiple-employer plan described in section 413(c), the plan administrator (as described in section 414(g)) is treated as the plan sponsor for purposes of this section. If approval is received to use substitute mortality tables by a plan, those tables must apply on a plan-wide basis (even if the plan is subject to the rules of section 413(c)(4)(A)).

(ii) *Application of controlled group consistency rules.* In the case of an

employer that participates in a multiple-employer plan, if the proportion of the plan's funding target attributable to the employees and former employees of the employer and members of its controlled group represents more than 50 percent of the plan's funding target, then the employer is treated as maintaining the plan for purposes of paragraph (c)(1) of this section. Thus, for a multiple-employer plan with credible mortality information that is treated as maintained by an employer under this paragraph (c)(7), unless substitute mortality tables are used for that plan, substitute mortality tables may not be used for any plan maintained by that employer or a member of its controlled group (and if substitute mortality tables are used for any other plan maintained by any member of the employer's controlled group, they must be used for the multiple-employer plan). By contrast, if the proportion of the plan's funding target attributable to the employees and former employees of the employer and members of its controlled group represents 50 percent or less of the funding target for a multiple-employer plan in which it participates, then the employer is not treated as maintaining the plan for purposes of paragraph (c)(1) of this section. Accordingly, whether substitute mortality tables may be used for other plans in such an employer's controlled group is independent of whether substitute mortality tables are used for the multiple-employer plan.

(d) *Full credibility*—(1) *In general.* The mortality experience with respect to a gender or other population within a plan has full credibility if the actual number of deaths for that population during the experience study period described in paragraph (d)(2) of this section is at least the full credibility threshold described in paragraph (d)(3) of this section. Paragraph (d)(4) of this section provides rules for the creation of a base substitute mortality table from the experience study, which apply if the mortality experience for the population has full credibility. Paragraph (d)(5) of this section provides rules regarding the use of separate substitute mortality tables for plan populations within a gender. Paragraph (d)(6) of this section provides an option to use the combined mortality experience of both genders to determine the existence and extent of credible mortality information and to develop a single mortality ratio for use in constructing substitute mortality tables.

(2) *Experience study period requirements*—(i) *General rule.* The base substitute mortality table for a gender or other population must be developed from an experience study of the mortality experience of that population that is collected over an experience study period. The experience study period must consist of 2, 3, 4, or 5 consecutive 12-month periods, and must be the same period for all populations except as provided in paragraph (c)(5)(iii) of this section.

(ii) *Requirement to use recent experience data*—(A) *General rule.* Except as provided in paragraph (d)(2)(ii)(B) of this section, the last day of the experience study period must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply. For example, if January 1, 2019, is the first day of the first plan year for which the substitute mortality tables will be used, then an experience study using calendar year data generally must include data collected for a period that ends no earlier than December 31, 2016.

(B) *Exception for submission between 1 and 2 years before effective date of table.* If the plan sponsor submits a request for approval to use of substitute mortality tables more than 1 year (and less than 2 years) before the first day of the first plan year for which the substitute mortality tables are to apply, then the experience study is not treated as failing to satisfy the rule in paragraph (d)(2)(ii)(A) of this section if the last day of the final year reflected in the experience data is less than 2 years before the date of submission. For example, if an application for approval to use of substitute mortality tables that would apply for plan years beginning on or after January 1, 2019 year is submitted in 2017, then an experience study using calendar year data may be based on data collected for a period that ends as early as December 31, 2015.

(iii) *Experience study based on benefit amount.* As provided in paragraph (d)(4)(i) of this section, the mortality rates under the base substitute mortality tables are amounts-weighted mortality rates that are derived from the experience study. An individual's benefit amount (which is used to determine amounts-weighted mortality rates and for other purposes under this paragraph (d)) is the individual's accrued benefit expressed in the form of an annual benefit commencing at normal retirement age (or at the current age, if later) if an individual has not commenced benefits and the individual's annual payment if the individual has commenced benefits. Because amounts-weighted mortality rates for a plan are determined using benefit amounts, the experience study used to develop a base substitute mortality table may not include periods before the plan was established.

(3) *Full credibility threshold*—(i) *Threshold number of deaths.* The full credibility threshold for a gender or other population is the product of 1,082 and the population's benefit dispersion factor. In calculating the population's benefit dispersion factor, for purposes of paragraphs (d)(3)(iii), (iv), and (v) of this section, the population is adjusted, as appropriate, for individuals who leave the population on account of a reason other than death.

(ii) *Population's benefit dispersion factor.* The population's benefit dispersion factor is equal to—

(A) The number of expected deaths for the population during the experience study period (as defined in paragraph (d)(3)(iii) of this section); multiplied by

(B) The sum of the mortality-weighted squares of the benefits (as defined in paragraph (d)(3)(iv) of this section); divided by

(C) The square of the sum of the mortality-weighted benefits (as defined in paragraph (d)(3)(v) of this section).

(iii) *Number of expected deaths.* For a population, the number of expected deaths during the experience study period is equal to the sum, for all years in the experience study period, of the expected number of deaths in the population during the year using the mortality rates from the standard mortality tables determined under paragraph (d)(4)(iii) of this section. This amount is equal to:

$$\sum_{t=1}^{E} \sum_{x=1}^{N_t} q_{xt}$$

Where E is equal to the number of years in the experience study period, t represents each year during the experience study period, x represents an individual in the population during year t, q_{xt} is the mortality rate for that individual's age and gender for the calendar year in which year t begins under the applicable standard mortality table determined under paragraph (d)(4)(iii) of this section, and N_t is equal to the number of individuals in the population in year t.

(iv) *Sum of the mortality-weighted squares of the benefits*—(A) *Determination.* For a population, the sum of the mortality-weighted squares of the benefits is the sum, for all years in the experience study period, for all individuals in the population at the beginning of the year, of the product of—

(*1*) The probability of death for the individual using the mortality rate for

the individual's age and gender from the standard mortality table determined under paragraph (d)(4)(iii) of this section; and

(*2*) The square of the benefit amount for the individual.

(B) *Expression as formula.* The sum of the mortality-weighted squares of the benefits for a population determined pursuant to paragraph (d)(3)(iv)(A) of this section is equal to:

$$\sum_{t=1}^{E} \sum_{x=1}^{N_t} q_{xt} b_{xt}^2$$

Where E is equal to the number of years in the experience study period, t represents each year during the experience study period, x represents an individual in the population during year t, q_{xt} is the mortality rate for that individual's age and gender for the calendar year in which year t begins under the applicable standard mortality table determined under paragraph (d)(4)(iii) of this section, b_{xt} is equal to the benefit amount for that individual for year t, and N_t is equal to the number of individuals in the population in year t.

(v) *Square of the sum of the mortality-weighted benefits*—(A) *Determination.* For a population, the square of the sum of the mortality-weighted benefits is equal to the square of the sum, for all years in the experience study period, for all individuals in the population at the beginning of the year, of the product of—

(*1*) The probability of death of the individual using the mortality rate for the individual's age and gender from the standard mortality table determined under paragraph (d)(4)(iii) of this section; and

(*2*) The benefit amount for the individual.

(B) *Expression as formula.* The square of the sum of the mortality-weighted benefits for a population determined pursuant to paragraph (d)(3)(v)(A) of this section is equal to:

$$\left(\sum_{t=1}^{E} \sum_{x=1}^{N_t} q_{xt} b_{xt} \right)^2$$

Where E is equal to the number of years in the experience study period, t represents each year during the experience study period, x represents an individual in the population during year t, q_{xt} is the mortality rate for that individual's age and gender for the calendar year in which t begins under the applicable standard mortality table determined under paragraph (d)(4)(iii) of this section, b_{xt} is equal to the benefit amount for that individual for year t, and N_t is equal to the number of individuals in the population in year t.

(4) *Development of mortality rates*—(i) *In general.* The mortality rates under the base substitute mortality tables must be amounts-weighted mortality rates that are derived from the experience study. Except as provided in paragraph (d)(4)(iv) of this section, the mortality rate for an age and gender is determined by multiplying the mortality rate for that age and gender from the standard mortality table determined under paragraph (d)(4)(iii) of this section by the mortality ratio determined under paragraph (d)(4)(ii) of this section. If the simplified rule of paragraph (c)(2)(ii)(B) of this section is used for the population, then the mortality ratio is determined only taking into account people who are at least 50 years old and less than 100 years old, but the mortality ratio is applied to all ages.

(ii) *Mortality ratio*—(A) *In general.* Except as provided in paragraph (d)(6) of this section, a mortality ratio is determined for a gender or other population within a gender, and is equal to the quotient determined by dividing—

(*1*) The sum, for all years in the experience study period, of the benefit amount for all individuals in the population at the beginning of the year who died during the year, by

(*2*) The sum, for all years in the experience study period, for all individuals in the population at the beginning of the year (adjusted, as appropriate, for individuals who leave on account of reason other than death), of the product of—

(*i*) The probability of death of the individual using the mortality rate for the individual's age and gender from the standard mortality table determined under paragraph (d)(4)(iii) of this section; and

(*ii*) The benefit amount for the individual.

(B) *Expression as formula.* For purposes of determining a mortality ratio as described in paragraph (d)(4)(ii)(A) of this section, the amount described in paragraph (d)(4)(ii)(A)(*2*) of this section is equal to:

$$\sum_{t=1}^{E} \sum_{x=1}^{N_t} q_{xt} b_{xt}$$

Where E is equal to the number of years in the experience study period, t represents each year during the experience study period, x represents an individual in the population during year t, q_{xt} is the mortality rate for that individual's age and gender for the calendar year in which t begins under the applicable standard mortality table determined under paragraph (d)(4)(iii) of this section, b_{xt} is equal to the benefit amount for that individual for year t, and N_t is equal to the number of individuals in the population in year t.

(iii) *Standard mortality table*—(A) *Projection of base table.* The standard mortality table for a year is the mortality table determined by applying cumulative mortality improvement factors determined under § 1.430(h)(3)–1(a)(2)(i)(E) to the base mortality table under § 1.430(h)(3)–1(d) for the period beginning with 2006 and ending in the base year for the base substitute mortality table determined under paragraph (c)(3)(ii) of this section. For purposes of the previous sentence, the cumulative mortality improvement factors are determined using the mortality improvement rates described in § 1.430(h)(3)–1(a)(2)(i)(C) that apply for the calendar year during which the plan sponsor submits the request for approval to use substitute mortality tables. If the plan sponsor submits such a request during 2017, then the cumulative mortality improvement factors are determined using the mortality improvement rates contained in the Mortality Improvement Scale MP–2016 Report (issued by the Retirement Plans Experience Committee (RPEC) of the Society of Actuaries and available at *www.soa.org/Research/Experience-Study/Pension/research-2016-mp.aspx*).

(B) *Selection of base table.* If the population consists solely of annuitants, the annuitant base mortality table set forth in § 1.430(h)(3)–1(d) must be used for purposes of paragraph (d)(4)(iii)(A) of this section. If the population consists solely of nonannuitants, the nonannuitant base mortality table set forth in § 1.430(h)(3)–1(d) must be used for that purpose. If the population includes both annuitants and nonannuitants, a combination of the annuitant and nonannuitant base tables set forth in § 1.430(h)(3)–1(d) must be used for that purpose. The combined table is constructed using the weighting factors for small plans that are set forth in § 1.430(h)(3)–1(d). The weighting factors are applied to develop the combined table using the following equation: Combined mortality rate = [nonannuitant rate * (1 − weighting

factor)] + [annuitant rate * weighting factor].

(iv) *Modification for ages 96 and older.* Mortality rates for ages 96 and older under the base substitute mortality table are determined using the rules of paragraph (d)(4)(i) of this section but substituting a modified mortality ratio for the mortality ratio determined under paragraph (d)(4)(ii) of this section. The modified mortality ratio is determined as follows—

(A) For ages 96 through 109, if the mortality ratio is greater than 1.0, the modified mortality ratio is equal to the mortality ratio for the population reduced by 1/15th of the excess of the mortality ratio over 1.0 for each year that the age exceeds 95.

(B) For ages 96 through 109, if the mortality ratio is less than 1.0, the modified mortality ratio is equal to the mortality ratio for the population increased by 1/15th of the excess of 1.0 over the mortality ratio for each year that the age exceeds 95.

(C) For ages 110 and older, the modified mortality ratio is equal to 1.0.

(v) *Change in number of individuals covered by table.* Experience data may not be used to develop a base table if the number of individuals in the population covered by the table (for example, the male annuitant population) as of the last day of the plan year before the year the request for approval to use the substitute mortality table is made is less than 80 percent or more than 120 percent of the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based, unless it is demonstrated to the satisfaction of the Commissioner that the experience data is accurately predictive of future mortality of that population (taking into account the effect of the change in individuals) after appropriate adjustments to the data are made (for example, excluding data from individuals with respect to a spun-off portion of the plan). For this purpose, a reasonable estimate of the number of individuals in the population covered by the table may be used.

(5) *Separate tables for specified populations*—(i) *In general.* Except as provided in this paragraph (d)(5), separate substitute mortality tables are permitted to be used for separate populations within a gender only if—

(A) All individuals of that gender are divided into separate populations;

(B) Each separate population has mortality experience that has full credibility as determined under the rules of paragraph (d)(5)(iii) of this section; and

(C) The separate base substitute mortality table for each separate population is developed applying the rules of paragraphs (d)(1) through (4) of this section using an experience study that takes into account solely members of that population.

(ii) *Annuitant and nonannuitant separate populations.* Notwithstanding paragraph (d)(5)(i)(B) of this section, a gender may be separated into separate populations of annuitants and nonannuitants for the purpose of developing and using substitute mortality tables, even if only one of those separate populations has credible mortality information. Similarly, if separate populations that satisfy paragraph (d)(5)(i)(B) of this section are established, then any of those populations may be further subdivided into separate annuitant and nonannuitant subpopulations, provided that at least one of the two resulting subpopulations has credible mortality information. The standard mortality tables under § 1.430(h)(3)–1 are used for a resulting subpopulation that does not have credible mortality information. For example, if the male hourly and salaried populations under a plan each have mortality experience with full credibility and the male salaried annuitant population has credible mortality information, then substitute mortality tables may be used for the plan with respect to the male salaried annuitant population even if the standard mortality tables under § 1.430(h)(3)–1 are used with respect to the male salaried nonannuitant population (because that nonannuitant population does not have credible mortality information).

(iii) *Credible mortality information for separate populations.* In determining whether the mortality experience for a separate population within a gender has full credibility, the rules of paragraph (d)(1) of this section must be applied to that separate population. In demonstrating that an annuitant (or nonannuitant) population within a gender or within a separate population does not have credible mortality information, the rules of paragraph (c)(2)(iii)(B) of this section are applied by substituting the annuitant (or nonannuitant) population for the gender.

(6) *Option to determine a single mortality ratio for both genders.* Base substitute mortality tables for a plan may be constructed by developing and applying a single mortality ratio for both genders, but only if the substitute mortality tables used for all plans maintained by members of the plan sponsor's controlled group (except for plans for which both the male and female populations, considered separately, have mortality experience with full credibility) are constructed in this manner. If the option under this paragraph (d)(6) is applied for a plan then, for all plans maintained by members of the plan sponsor's controlled group, whether both the male and female populations within the plan have credible mortality information (and, if that combined population's mortality experience does not have full credibility, the partial credibility weighting factor for the plan) is determined using the combined mortality experience for both genders.

(e) *Partial credibility*—(1) *In general.* The mortality experience with respect to a population has partial credibility if the actual number of deaths for that population during the experience study period described in paragraph (d)(2) of this section is at least equal to 100 and is less than the full credibility threshold described for the population in paragraph (d)(3) of this section. If the mortality experience for the population has partial credibility, then in lieu of creating a base substitute mortality table as described in paragraph (d) of this section, the base substitute mortality table is created as the sum of—

(i) The product of—

(A) The partial credibility weighting factor determined under paragraph (e)(2) of this section; and

(B) The mortality rates that are derived from the experience study determined under paragraph (d)(4)(i) of this section, and

(ii) The product of—

(A) One minus the partial credibility weighting factor described in paragraph (e)(2) of this section; and

(B) The mortality rate from the standard mortality tables described in paragraph (d)(4)(iii) of this section.

(2) *Partial credibility weighting factor.* The partial credibility weighting factor is equal to the square root of the fraction—

(i) The numerator of which is the actual number of deaths for the population during the experience study period, and

(ii) The denominator of which is the full credibility threshold for the population described in paragraph (d)(3) of this section.

(f) *Special rules for newly-affiliated plans*—(1) *In general.* This paragraph (f) provides special rules that provide temporary relief from certain rules in this section in the case of a controlled group that includes a newly-affiliated plan (as defined in paragraph (f)(2) of this section). Paragraph (f)(3) of this section provides a transition period

during which the requirement in paragraph (c)(1) of this section (that is, the requirement that all plans within the controlled group that have credible mortality information must use substitute mortality tables) is not applicable. Paragraph (f)(4) of this section provides special rules that permit the use of a shorter experience study period in the case of a newly-affiliated plan that excludes the mortality experience data for the period before the date the plan becomes a newly-affiliated plan.

(2) *Definition of newly-affiliated plan.* For purposes of this paragraph (f), a plan is a newly-affiliated plan if the plan sponsor becomes a member of the new controlled group in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f). A plan also is treated as a newly-affiliated plan for purposes of this section if the plan is established in connection with a transfer of assets and liabilities from another employer's plan in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f).

(3) *Transition period for newly-affiliated plans.* The use of substitute mortality tables for a plan within a controlled group is not prohibited merely because, during the transition period, substitute mortality tables are not used for a newly-affiliated plan that fails to demonstrate a lack of credible mortality information during that period. Similarly, during the transition period, the use of substitute mortality tables for a newly-affiliated plan is not prohibited merely because substitute mortality tables are not used for another plan within the controlled group that fails to demonstrate a lack of credible mortality information during that period. The transition period begins on the date of the transaction that results in the plan becoming a newly-affiliated plan and ends on the last day of the plan year that immediately follows the latest ending period described in section 410(b)(6)(C)(ii) with respect to that transaction for any of the plans in the controlled group.

(4) *Experience study period for newly-affiliated plan*—(i) *In general.* The mortality experience data for a newly-affiliated plan may either include or exclude mortality experience data for the period before the date the plan becomes a newly-affiliated plan. If a plan sponsor excludes mortality experience data for the period before the date the plan becomes a newly-affiliated plan, the exclusion must apply for all populations within the plan.

(ii) *Demonstration relating to lack of credible mortality information.* If the experience study for a newly-affiliated plan excludes mortality experience data for the period prior to the date the plan becomes a newly-affiliated plan, then the demonstration that the plan does not have credible mortality information for a plan year that begins after the transition period can be made using a shorter experience study period than would otherwise be permitted under paragraph (c)(2)(iii)(B) of this section, provided that the experience study period begins with the date the plan becomes a newly-affiliated plan and ends not more than one year and one day before the first day of the plan year.

(iii) *Demonstration relating to credible mortality information.* If the experience study for a newly-affiliated plan excludes mortality experience data for the period before the date the plan becomes a newly-affiliated plan and the plan fails to demonstrate that it does not have credible mortality information for the plan year under the rules of paragraph (f)(4)(ii) of this section, then other plans within the controlled group may continue to use substitute mortality tables only if substitute mortality tables are used for the newly-affiliated plan for the plan year. In such a case, the experience study period for the newly-affiliated plan may consist of a 12-month period.

(g) *Effective/applicability date*—(1) *General rule.* This section applies for plan years beginning on or after January 1, 2018. Except as provided in paragraph (g)(2) of this section, the substitute mortality table used for a plan for such a plan year must comply with the rules of paragraphs (a) through (f) of this section.

(2) *Transition rule for previously approved substitute mortality tables*—(i) *Applicability for 2018.* If a plan sponsor has received approval from the Commissioner to use substitute mortality tables for a plan year beginning in 2017, then that previous approval applies to a plan year beginning in 2018 provided that—

(A) The previous approval period had not ended;

(B) Substitute mortality tables are used for all plans in the plan sponsor's controlled group in accordance with the terms of that approval; and

(C) The projection factors provided in Projection Scale AA, as set forth in § 1.430(h)(3)–1(d) as in effect on December 31, 2017 (as contained in 26 CFR part 1 revised April 1, 2017) are applied to the base substitute mortality table.

(ii) *Applicability for later plan years.* If a plan sponsor is described in paragraph (g)(2)(i) of this section, then that previous approval applies to a later plan year provided that—

(A) The previous approval period had not ended;

(B) Substitute mortality tables are used for all plans in the plan sponsor's controlled group that have credible mortality information within the meaning of paragraph (c)(2)(ii) of this section; and

(C) The mortality improvement factors described in paragraph (c)(3)(ii) of this section are applied to the base substitute mortality table.

(3) *Transition rule for requests for approval to use substitute mortality tables.* A written request described in paragraph (b)(1)(i) of this section to use substitute mortality tables for a plan year that begins during 2018 does not fail to satisfy the timing requirement of paragraph (b)(1)(ii) of this section if it is submitted no later than February 28, 2018, provided that the plan sponsor agrees to a 90-day extension of the 180-day review period in accordance with paragraph (b)(2)(iv) of this section.

■ Par. 4. Section 1.431(c)(6)–1 is revised to read as follows:

§ 1.431(c)(6)–1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* The mortality assumptions that apply to a defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and § 1.430(h)(3)–1(a) are used to determine a multiemployer plan's current liability for purposes of applying the rules of section 431(c)(6). Either the generational mortality tables used pursuant to § 1.430(h)(3)–1(a)(2) or the static mortality tables used pursuant to § 1.430(h)(3)–1(a)(3) may be used for a multiemployer plan for this purpose. However, for this purpose, substitute mortality tables under § 1.430(h)(3)–2 may not be used for a multiemployer plan.

(b) *Effective/applicability date.* This section applies for plan years beginning on or after January 1, 2018. For rules that apply to plan years beginning before January 1, 2018 and on or after January 1, 2008, see § 1.431(c)(6)–1 (as contained in 26 CFR part 1 revised April 1, 2015).

■ Par. 5. Section 1.433(h)(3)–1 is added to read as follows:

§ 1.433(h)(3)–1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* In accordance with section 433(h)(3)(B), the mortality assumptions that apply to a defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and

§ 1.430(h)(3)–1(a) are used to determine a CSEC plan's current liability for purposes of applying the rules of section 433(c)(7)(C). Either the static mortality tables used pursuant to § 1.430(h)(3)–1(a)(3) or generational mortality tables used pursuant to § 1.430(h)(3)–1(a)(2) may be used for a CSEC plan for this purpose, but substitute mortality tables under § 1.430(h)(3)–2 may not be used for this purpose.

(b) *Effective/applicability date.* This section applies for plan years beginning on or after January 1, 2018.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: August 21, 2017.

David Kautter,

Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 2017–21485 Filed 10–3–17; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

[Docket No. MSHA–2014–0030]

RIN 1219–AB87

Examinations of Working Places in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; stay of effective date; reinstatement of rules.

SUMMARY: The Mine Safety and Health Administration is staying the effective date of the Agency's January 23, 2017, final rule that amended standards for examination of working places in metal and nonmetal mines to June 2, 2018. MSHA also is reinstating the provisions of the working place examinations standards that were in effect as of October 1, 2017. This stay and reinstatement offers additional time for MSHA to provide stakeholders training and compliance assistance.

DATES: As of October 5, 2017, 30 CFR 56.18002 and 57.18002 are stayed until June 2, 2018, and 30 CFR 56.18002T and 57.18002T are added until June 2, 2018.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Stay of Effective Date

On January 23, 2017, MSHA published a final rule in the **Federal Register** (82 FR 7680) amending the Agency's standards for the examination of working places in metal and nonmetal (MNM) mines (January 2017 final rule). The final rule was scheduled to become effective on May 23, 2017. On May 22, 2017, MSHA published a final rule delaying the effective date to October 2, 2017 (82 FR 23139). On September 12, 2017, MSHA proposed to further delay the effective date of the final rule from October 2, 2017 to March 2, 2018 (82 FR 42765). The comment period for the proposed delay of the final rule's effective date closed on September 26, 2017.

In the same issue of the **Federal Register**, MSHA reopened the rulemaking record and proposed to amend the January 2017 final rule with regard to the timing of the working place examination and contents of the examination record (82 FR 42757). MSHA has scheduled four public hearings from October 24, 2017, to November 2, 2017, at various locations, to provide the members of the public an opportunity to present their views on the limited changes being proposed. The comment period for the proposed limited changes closes on November 13, 2017.

Most commenters on the proposed rule to delay the effective date of the final rule supported extending the date beyond October 2, 2017. One commenter who supported extending the effective date to March 2, 2018, stated that the extension of time would offer additional time for MSHA to provide stakeholders training and compliance assistance, would further permit MSHA to address issues raised by stakeholders during quarterly training calls and stakeholder meetings and compliance assistance visits, and would also provide MSHA more time to train its inspectors to help ensure consistency in MSHA enforcement. This commenter also supported a further delay of the effective date of the final rule, should such be required, if the Agency has yet to achieve its stated goals.

Many commenters stated that an extension beyond October 2, 2017 is necessary and appropriate and recommended an indefinite suspension of the effective date. The commenters maintained that, since substantive changes to the January 2017 final rule were proposed at the same time as the proposed delay, it is imprudent to establish any effective date until an amended final rule is promulgated and the substance of the rule is known. In addition, they acknowledged MSHA's stated intent to provide compliance assistance to industry and specific training to inspectors prior to the effective date. The commenters expressed concern that, for any compliance assistance measures to have any meaning, it is necessary for the exact terms of the final rule to be known before the final rule's effective date. Then, after the period of compliance assistance from MSHA, mine operators will be required to develop appropriate compliance programs to comply with the final rule. Given the uncertainty of the final rule's provisions and the compliance assistance efforts to be scheduled, the commenters believed that an appropriate effective date cannot be established.

Other commenters stated that the proposed delay to March 2, 2018, was arbitrary and does not increase the likelihood that MSHA will complete all of the compliance assistance, outreach, and training tasks in that timeframe, or that the MNM industry will be ready to comply on the new effective date. They recommended that MSHA establish an effective date that is six months after the date on which any changes to the final Examinations rule are published in the **Federal Register**.

MSHA agrees with commenters who support an extension beyond the proposed March 2, 2018 effective date so that the Agency will complete its stated goals by the effective date of the final rule. To ensure compliance readiness on that date, MSHA is developing compliance assistance materials to assist the industry. A stay beyond the proposed March 2, 2018, effective date will provide MSHA the time and flexibility to make these materials available to stakeholders and post them on MSHA's Web site (*www.msha.gov*); hold informational stakeholder meetings at various locations around the country; and focus on compliance assistance visits in other areas of the country, as well as ensure all issues at these meetings and visits are addressed. Additional time will also allow MSHA to train its inspectors to ensure consistent enforcement. MSHA will make the Agency's inspector training materials available to the mining community to assist miners and mine operators in effectively implementing the rule, thus enhancing the safety of miners.

Labor union commenters did not support the proposed delay in the effective date, stating that a delay was unnecessary and miners' health and safety would be affected by an extension. Labor also stated that the

January 2017 final rule made only minor changes.

Staying the effective date does not negatively affect miners' safety and health; the standards that have been in effect for many years are reinstated and MSHA will continue to enforce those standards. MSHA will also continue to proactively provide compliance assistance and training needed to assure that miners' safety and health are protected. Staying the effective date of the January 2017 rule is necessary so that the diverse MNM mining industry is provided the educational, technical, and compliance assistance to ensure miners' safety and health and to comply with final rule requirements. The diversity in the MNM mining industry relates not only to commodities produced at mines and mills, but also differences for small and large mines in complying with the final rule. Based on data reported to MSHA, 90 percent of over 11,000 MNM mines employ fewer than 20 miners and almost all (98 percent) are surface mines.

Since most MNM mines are small operations, MSHA recognizes that they have limited staff, including limited administrative staff, as well as limited resources, and many are located in remote areas. These small mines may have limited access or no access to the internet at the mine site and may rely on stakeholder meetings and other types of MSHA assistance to acquire informational materials needed to comply with the rule. In MSHA's experience with previous changes to metal and nonmetal standards and regulations, outreach to these small mine operators requires MSHA to be flexible regarding different approaches that may be needed and regarding the time necessary to ensure that all miners and mine operators have the tools and the information to comply with the rule.

MSHA has concluded that miners are better protected when operators and miners are provided needed informational and instructional materials and training and technical assistance regarding the rule's requirements. The stayed effective date to June 2, 2018 provides MSHA the flexibility the Agency needs to promote compliance, thereby increasing protections for miners.

Further, staying the January 2017 rule without also reinstating the provisions that were in effect as of October 1, 2017, would leave miners unprotected. Reinstatement without delay is necessary to continue historical protection of metal and nonmetal miners through workplace examinations.

II. Other Issues

Some commenters raised concern that the substance of the final rule is uncertain because litigation is pending on the January 2017 final rule. The commenters suggested that MSHA delay the effective date indefinitely until the rule's status is finally resolved. These comments are outside the scope of the September 12, 2017, proposed rule, which was limited to delaying the rule's effective date to ensure compliance readiness.

III. Conclusion

Having given due consideration to all comments received, MSHA has determined that it is appropriate to stay the effective date until June 2, 2018, and to reinstate the workplace examinations rules that were in effect as of October 1, 2017. The stay will address commenters' concerns regarding sufficient time for MSHA to fully inform and educate the mining community on the rule's requirements. A June 2, 2018, effective date provides more time and flexibility for MSHA to complete development of compliance assistance materials and make them available to stakeholders, hold informational meetings for stakeholders and conduct compliance assistance visits at MNM mines throughout the country. In addition, the extension will permit more time for MSHA to address issues that have been or may be raised during quarterly training calls and upcoming stakeholder meetings and compliance assistance visits and to train MSHA inspectors to help ensure consistency in MSHA enforcement. MSHA has determined that the educational, technical, and compliance assistance that will be provided to mine operators and miners during the period of the stayed effective date will enhance their understanding of the rule's requirements, thereby increasing protections for miners.

For the foregoing reasons, MSHA has concluded that it is appropriate to stay the effective date until June 2, 2018.

Accordingly, the effective date of the final rule published January 23, 2017 (82 FR 7680), delayed on May 22, 2017 (82 FR 23139), is stayed until June 2, 2018. The standards that were in effect as of October 1, 2017, are reinstated.

List of Subjects in 30 CFR Parts 56 and 57

Metals, Mine safety and health, Reporting and recordkeeping requirements.

Dated: October 3, 2017.

Wayne D. Palmer,

Acting Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is amending parts 56 and 57 as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 56.18002 [Stayed]

■ 2. Section 56.18002 is stayed until June 2, 2018.

■ 3. Section 56.18002T is added until June 2, 2018 to read as follows:

§ 56.18002T Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

■ 4. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 57.18002 [Stayed]

■ 5. Section 57.18002 is stayed until June 2, 2018.

■ 6. Section 57.18002T is added until June 2, 2018 to read as follows:

§ 57.18002T Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

[FR Doc. 2017–21594 Filed 10–3–17; 4:15 pm]

BILLING CODE 4520–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0875]

RIN 1625–AA08

Special Local Regulation; Ohio River, Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for all navigable waters of the Ohio River from mile marker (MM) 595.0 to MM 597.0. This action is necessary to provide for the safety of life on these navigable waters near Louisville, KY, during a regatta. Entry into, transiting through, or anchoring within this regulated area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective from 11 a.m. on October 7, 2017 through 4 p.m. on October 8, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Kevin Schneider, Waterways Department Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5333, email *Kevin.L.Schneider@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
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 final 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 it is impracticable. We must establish this Special Local Regulation by October 7, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is necessary to prevent possible loss of life and property.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with a regatta from 11 a.m. on October 7, 2017 through 4 p.m. on October 8, 2017 will present a safety concern on all navigable waters on the Ohio River extending from mile marker (MM) 595.0 to MM 597.0. The purpose of this rule is to ensure the safety of life and vessels on these navigable waters before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation that will be enforced from 11 a.m. to 5 p.m. on October 7 and 11 a.m. to 4 p.m. on October 8. The temporary special local regulation will cover all navigable waters of the Ohio River from MM 595.0 to MM 597.0. The duration of the special local regulation is intended to ensure the safety of waterway users and these navigable waters before, during, and after the scheduled event. No vessel or person is permitted to enter the special local regulated area without obtaining permission from the COTP.

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Entry into the regulated area will be prohibited from 11 a.m. to 5 p.m. on October 7 and 11 a.m. to 4 p.m. on October 8 from MM 595.0 to MM 597.0, unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Moreover, the Coast Guard will issue written Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the temporary special local regulation that is in place.

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 special local regulation, 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 special local regulated area lasting eleven hours over two days on all navigable waters extending two miles of the Ohio River. It is categorically excluded from further review under paragraph 34(h) and 35(a) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233.

■ 2. Add § 100.35T08–0875 to read as follows:

§ 100.35T08–0875 Special Local Regulation; Ohio River, Louisville, KY.

(a) *Location.* All navigable waters of the Ohio River from mile marker (MM) 595.0 to MM 597.0 in Louisville, KY.

(b) *Enforcement period.* This section will be enforced from 11 a.m. on October 7, 2017 through 4 p.m. on October 8, 2017. The Captain of the Port Sector Ohio Valley (COTP) or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the special local regulation.

(c) *Special local regulations.* (1) In accordance with the general regulations in this part, entry into this area is prohibited unless authorized by the COTP or a designated representative.

(2) Recreational vessels may be permitted to transit the regulated area, but are restricted to at least 1,000 feet from the perimeter of the race course and restricted to the Indiana side of the Ohio River. Recreational vessels transiting into and away from this area are restricted to the slowest safe speed creating minimum wake.

(3) The COTP may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(4) All other persons or vessels desiring entry into or passage through the area must request permission from the COTP or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

Dated: September 22, 2017.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2017–21468 Filed 10–4–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0386; FRL–9968–76–Region 7]

Approval of Nebraska Air Quality Implementation Plans; Adoption of a New Chapter Under the Nebraska Administrative Code

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 State Implementation Plan (SIP) submitted by the state of Nebraska on November 14, 2011. Nebraska is adding a new chapter titled ''Visibility Protection'' which provides Nebraska authority to implement Federal regulations relating to Regional Haze and Best Available Retrofit Technology (BART). The new chapter incorporates by reference EPA's Guidelines for BART Determinations Under the Regional Haze Rule. The revision to the SIP meets the visibility component of the Clean Air Act (CAA).

DATES: This direct final rule will be effective December 4, 2017, without further notice, unless EPA receives adverse comment by November 6, 2017. If EPA receives adverse comment, we 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–R07–OAR–2017–0386, to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7391, or by email at *crable.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

EPA is taking direct final action to approve revisions to Nebraska's SIP that will amend title 129 of the Nebraska Administrative Code to include rules regulating regional haze. This revision adds a new chapter, chapter 43, entitled ''Visibility Protection'', to title 129 which incorporates by reference EPA Code of Federal Regulations under title 40 part 51 of EPA's Guidelines for BART determiniations under the Regional Haze Rule. This new chapter provides the Nebraska Department of Environmental Quality (NDEQ) the authority to require sources to conduct BART determinations for the purpose of issuing BART permits. This revision to title 129 is consistent with Federal regulations related to Regional Haze and BART, adopting by reference the definitions for the Federal Regional Haze rule at 40 CFR 51.301 and adopts by reference, appendix Y, to 40 CFR part 51, ''Guidelines for BART Determinations under the Regional Haze Rule.'' The revision to the SIP also meets the visibility component of the CAA section 110(a)(2)(J). Approval of these revisions will not impact air quality and will ensure consistency between the State and Federally approved rules.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The revised chapter was placed on public notice and a public hearing was held by the State on July 13, 2007, where no comments were received. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is approving the state's request to revise the SIP to include amendments to the Nebraska air quality rules as it relates to the Regional Haze and Best Available Retrofit Technology.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA does not anticipate adverse comment because the revisions to the existing rules are routine and consistent with the Federal regulations, thereby, strengthening the SIP. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to revise title 129 of the Nebraska Administrative Code, chapter 43, ''Visibility Protection''. If adverse comments are received on this direct final rule, we will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. Should EPA receive adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

IV. 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 Nebraska regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the

Director of the Federal Register in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 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 December 4, 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, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Regional haze, Sulfur dioxide, Visibility, Volatile organic compounds.

Dated: September 25, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

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 CC—Nebraska

■ 2. Amend § 52.1420(c) by revising the entry ''129–43'' to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
*	*	*	*	* * *
129–43	Visibility Protection	2/6/08	10/5/17 [Insert **Federal Register** citation].	
*	*	*	*	* * *

[1] 62 FR 27968 (May 22, 1997).

* * * * *

[FR Doc. 2017–21379 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0620; FRL–9968–74–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Ozone Offset Requirements in Davis and Salt Lake Counties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on August 20, 2013, and on June 29, 2017. The submittals revise the portions of the Utah Administrative Code (UAC) that pertain to ozone offset requirements in Davis and Salt Lake Counties for major sources. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

DATES: This final rule is effective on November 6, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket Identification Number EPA–R08–OAR–2016–0620. All documents in the docket are listed on the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah sent the EPA revisions to their nonattainment permitting regulations, specifically to address EPA identified deficiencies in those regulations that may also affect the EPA's ability to approve Utah's fine particulate matter ($PM_{2.5}$) SIP. These revisions addressed R307–403–1 (Purpose and Definitions), R307–403–2 (Applicability), R307–403–11 (Actual Plant-wide Applicability Limits (PALs)), and R307–420 (Ozone Offset Requirements in Davis and Salt Lake Counties). On June 2, 2016, the EPA entered into a consent decree with the Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air regarding a failure to act, pursuant to CAA sections 110(k)(2)–(4), on certain complete SIP submissions from states intended to address specific requirements related to the 2006 $p.m._{2.5}$ NAAQS for certain nonattainment areas, including the submittal from the Governor of Utah dated August 20, 2013.

On February 3, 2017, the EPA published a final rulemaking (82 FR 9138) to conditionally approve the revisions in Utah's August 20, 2013 submittal, except for the revisions to R307–420. The submittal did not contain the appropriate supporting documentation required for the EPA to take action on R307–420. As a result, the EPA requested an extension for taking action on R307–420, and on December 20, 2016, the EPA was granted an extension which moved the deadline for taking final action on R307–420 from January 3, 2017, to September 29, 2017 (See docket). Utah submitted on June 29, 2017, an additional SIP revision that addresses the lack of appropriate supporting documentation for R307–420.

II. Response to Comments

No comments were received on our July 14, 2017 notice of proposed rulemaking (82 FR 32517).

III. Final Action

The EPA is taking final action to approve Utah's revisions to R307–420 and R307–403–6, as submitted on August 20, 2013, and June 29, 2017. R307–420 maintains the offset provisions of the nonattainment area new source review (NNSR) permitting program in Salt Lake and Davis Counties after the area is re-designated to attainment for ozone. R307–420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under Utah's ozone maintenance plan. R307–420 was also modified to include the definitions and applicability provisions of R307–403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas) to ensure that the definitions and applicability provisions in R307–420 are consistent with related permitting rules in R307–403. The EPA is taking final action to approve these revisions.

On August 20, 2013, Utah submitted revisions to the definitions in the NNSR program that addressed certain deficiencies in the program. Utah also submitted revisions to the corresponding definitions in R307–420. As explained in our proposed rulemaking published on July 14, 2017 (82 FR 32517), since the EPA had not received the 1999 rulemaking that created R307–420 as a SIP submittal, we were unable to take action on the revisions to R307–420 in our February 3, 2017 (82 FR 9138) final rulemaking for Utah's revisions to Nonattainment Permitting Regulations.

Utah's June 29, 2017 submittal addressed this issue by submitting the 1999 rule revisions that created R307–420 and modified R307–403–6. As these rule revisions preserve the ozone maintenance plan requirements for offsets and contingency measures in Salt Lake and Davis Counties while improving the clarity of those requirements, we proposed to approve the 1999 rule revisions on July 14, 2017 (82 FR 32517). We also proposed to approve the remaining portion of the August 20, 2013 submittal.

The EPA is taking final action to approve the subsequent revisions to R307–420, submitted on August 20, 2013, that Utah promulgated to ensure that the definitions and applicability provisions in R307–420 are consistent with related permitting rules in R307–403. For the reasons explained in our July 14, 2017 notice of proposed rulemaking, the definitions and applicability provisions in R307–403 are consistent with requirements for NNSR programs found in 40 CFR 51.165. While R307–420 is part of the ozone maintenance plan for Salt Lake and Davis Counties and not part of the NNSR program, and therefore, not directly subject to the requirements in 40 CFR 51.165, we view the corresponding revisions to the definitions and applicability provisions as strengthening the maintenance plan. Specifically, the EPA is approving the

following revisions to Utah's nonattainment permitting regulations:

TABLE 1—REVISED SECTIONS AS PUBLIC NOTICED IN THE UTAH STATE BULLETIN ON MARCH 1, 1999

(Submitted on June 29, 2017)

Adds Section R307–420–1 (Purpose).
Adds Section R307–420–2 (Definitions).
Adds Section R307–420–3 (Applicability).
Adds Section R307–420–4 (General Requirements).
Adds Section R307–420–5 (Contingency Measure: Offsets for Oxides of Nitrogen).
Revises Section R307–403–6 (Offsets: Ozone Nonattainment Areas and Davis and Salt Lake Counties).
1. Removes the phrase: ''and Davis and Salt Lake Counties'' from title.
2. Adds the phrase: ''In any ozone nonattainment area''.
3. Adds the phrase ''42 U.S.C. 7511a''.
4. Removes the language:
''As outlined in Section 182 of the federal Clean Air Act, for moderate areas, the emission offset ratio must be at least 1.15.1.
(1) Ozone Maintenance Plan, Salt Lake and Davis Counties. In the event that the contingency measures described in Section IX, Part D.2.h.(3) of the State Implementation Plan are triggered, the offset requirement in (2) below shall apply to emissions of both volatile organic compounds and oxides of nitrogen.
(2) The emission offset ratio must be at least 1.2.1, and offset must be obtained for the same pollutant for which the source or modification has been deemed ''major''.

TABLE 2—REVISED SECTIONS SUBMITTED ON AUGUST 20, 2013

R307–420–1 (Purpose) the phrase: ''Except as provided in R307–420–2, the definitions in R307–403–1 apply to R307–420.''
R307–420–3 (Applicability) the new paragraph: (3) The applicability provision in R307–403–2(1)(a) through (f) and R307–403–2(2)(2) through (7) apply in R307–420.''

Please refer to the August 20, 2013 and June 29, 2017 submittal for further details on these revisions.

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 UDAQ rules as described in the amendments to 40 CFR part 52 set forth in this document. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 8 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1]

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 Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact in 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).

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

[1] 62 FR 27968 (May 22, 1997).

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 December 4, 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 CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 20, 2017.

Suzanne J. Bohan,

Acting Regional Administrator, Region 8.

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 TT—Utah

■ 2. Section 52.2320, paragraph (c), is amended as follows:

■ a. Under the centered heading ''**R307–403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas**'':

■ i. By revising the table entry for ''R307–403.''

■ ii. By adding a table entry for ''R307–403–6'' in numerical order.

■ b. By adding a centered heading ''**R307–420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties**'' and table entries for ''R307–420–1'', ''R307–420–2'', ''R307–420–3'', ''R307–420–4'', and ''R307–420–5'' in numerical order.

The revision and additions read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
*	*	*	*	*
R307–403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas				
R307–403	Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.	9/15/1998	71 FR 7679, 2/14/2006	Except for R307–403–1, R307–403–2, R307–403–6, R307–403–10, R307–403–11.
*	*	*	*	*
R307–403–6	Offsets: Ozone Non-attainment Areas.	9/15/1998	[insert **Federal Register** citation], 10/5/2017.	
*	*	*	*	*
R307–420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties				
R307–420–1	Purpose	3/1/1999, 7/1/2013	[insert **Federal Register** citation], 10/5/2017.	
R307–420–2	Definitions	3/1/1999, 7/1/2013	[insert **Federal Register** citation], 10/5/2017.	
R307–420–3	Applicability	3/1/1999, 7/1/2013	[insert **Federal Register** citation], 10/5/2017.	
R307–420–4	General Requirements	3/1/1999, 7/1/2013	[insert **Federal Register** citation], 10/5/2017.	
R307–420–5	Contingency Measure: Offsets for Oxides of Nitrogen.	3/1/1999, 7/1/2013	[insert **Federal Register** citation], 10/5/2017.	

* * * * *

[FR Doc. 2017–21111 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2017–0485; FRL–9968–78–Region 7]

Approval of Nebraska's Air Quality Implementation Plan, Operating Permits Program, and 112(l) Program; Revision to Nebraska Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP), Operating Permits Program, and 112(l) program submitted on July 14, 2014, by the State of Nebraska. This action amends the SIP to revise two chapters, ''Definitions'' and ''Operating Permit Modifications; Reopening for Cause''. Specifically, these revisions incorporate by reference the list of organic compounds exempt from the definition of volatile organic compound (VOC) found in the Code of Federal Regulations; notification requirements for the operating permit program are being amended to be consistent with the Federal operating permit program requirements; the definition of ''solid waste'' is being revised by the state, however, because the state's definition is inconsistent with the Federal definition, EPA is not approving this definition into the SIP. Finally, the state is extending the process of ''off-permit changes'' to Class I operating permits. Additional grammatical and editorial changes are being made in this revision. Approval of these revisions will not impact air quality, ensures consistency between the State and Federally-approved rules, and ensures Federal enforceability of the State's rules.

DATES: This direct final rule will be effective December 4, 2017, without further notice, unless EPA receives adverse comment by November 6, 2017. If EPA receives adverse comment, we 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–R07–OAR–2017–0485, to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7391, or by email at *crable.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

Nebraska's July 14, 2014, submission requested revisions to seven chapters of ''Title 129—Nebraska Air Quality Regulations''. This action will amend the SIP to include revisions to two of those chapters, title 129 of the Nebraska Administrative Code, chapter 1 ''Definitions'', and chapter 15 ''Operating Permit Modifications; Reopening for Cause''. Of the remaining five chapters, EPA previously approved revisions to two of the chapters in separate direct final rulemakings published in the **Federal Register**. Chapter 4, ''Ambient Air Quality Standards'' was approved on October 11, 2016, and chapter 34 ''Emission Sources; Testing; Monitoring'' was approved on October 7, 2016. EPA will take action separately on two other chapters, chapter 20 ''Particulate Emissions; Limits and Standards'' and chapter 18 ''New Performance Standards''. The final chapter, chapter 28 ''Hazardous Air Pollutants; Emissions Standards'', submitted as part of the July 14, 2014, SIP submission, is not approved in the Nebraska SIP and therefore EPA will take no further action for this chapter.

EPA is approving revisions to the Nebraska SIP and Operating Permits Program in title 129, chapter 1 ''Definitions''. The definition of VOC contained in section 160 of chapter 1 ''Definitions'' is being revised. Specifically, section 160 of chapter 1 contains a definition of VOC that provides exceptions to the definition based upon a list of organic compounds, which have been determined to have negligible photochemical reactivity. Because it is difficult to stay current in regard to the list of compounds, the revision EPA is approving removes the list at section 160, and references the list contained in the Code of Federal Regulations at 40 CFR 51.100(s)(1) and (5). In addition, revisions to chapter 1, section 139, are being made to the SIP and the Operating Permits Program to change the notification requirements for ''Section 502(b)(10) changes'' to require facilities to provide written notification at least 7 days in advance, rather than 30 days. This revision makes the notification requirements consistent with the Federal operating permit program requirements. In addition, Nebraska requested revisions to the definition of ''solid waste'' at chapter 1, section 144, to make it consistent with the definition of ''solid waste'' included in the Nebraska Environmental Protection Act and other applicable regulations in Nebraska.[1] Neb. Rev. Stat. 81–1502(26). The definition as proposed by the Nebraska Department of Environmental Quality (NDEQ) is not consistent with the definition of ''solid waste'' in Federal law and regulations. Therefore, EPA is not approving Nebraska's proposed revision to the definition of ''solid waste'' into the State Implementation Plan or Operating Permits Program. Finally, other grammatical and numerical edits are being made in this chapter.

EPA is approving revisions to the Nebraska SIP, Operating Permits Program and 112(l) program for chapter 15 ''Operating Permit Modifications; Reopening for Cause'', which extends ''off-permit changes'' to Class I and II

[1] The definition of ''solid waste'' in the Nebraska Environmental Protection Act was updated in 2013 as a result of Legislative Bill 203 to exclude ''slag'' from the definition. This revision further clarifies that ''slag'' is a by-product of value and therefore is excluded from the definition of ''solid waste.''

operating permits as allowed under the Federal program. Section 007 of chapter 15 is being revised and updated allowing changes within a permitted facility without a permit revision if the change meets certain specified criteria. The revised process allows certain minor revisions to be made without requiring all applicable administrative procedures for full permit issuance. These changes ensure that chapter 15 conforms to applicable Federal regulations. Finally, revisions to chapter 15 amend the minimum number of days to submit a written notification of a change from thirty days to seven days under certain circumstances when changing Class I and II operating permits, and makes various grammatical revisions for clarity and consistency purposes.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The revised chapters were placed on public notice and a public hearing was held by the State on January 6, 2014, where no comments were received. In addition, as explained in this preamble, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA does not anticipate adverse comment because the revisions to the existing rules are routine and consistent with the Federal regulations, thereby, strengthening the SIP. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to revise title 129, chapters 1 and 15. If adverse comments are received on this direct final rule, we will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. Should EPA receive adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

IV. 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 Nebraska Regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2]

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rulemaking would approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

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).

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus Executive Order 13132 does not apply to this action. This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rulemaking also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

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 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**. A major rule cannot take effect until 60 days after it

[2] 62 FR 27968 (May 22, 1997).

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 December 4, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 25, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as set forth below:

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 CC—Nebraska

■ 2. Amend § 52.1420(c) by revising ''129–1'' and ''129–15'' to read as follows:

§ 52.1420 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
State of Nebraska				
Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
129–1	Definitions	5/13/14	10/5/17, [Insert **Federal Register** citation].	The proposed definition of ''solid waste'' is not approved into the SIP. The second sentence beginning at ''Solid waste'' and ending at ''discarded material'', is not approved into the SIP.
*	*	*	*	*
129–15	Operating Permit Modifications; Reopening for Cause.	5/13/14	10/5/17, [Insert **Federal Register** citation].	

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Amend appendix A to part 70 by adding new paragraph (o) under ''Nebraska; City of Omaha; Lincoln-Lancaster County Health Department'' to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

* * * * *

(o) The Nebraska Department of Environmental Quality submitted revisions to the Nebraska Administrative Code, title 129, chapter 1, ''Definitions'' and chapter 15, ''Operating Permit Modifications; Reopening for Cause'' on July 14, 2014. The state effective date is May 13, 2014. This revision is effective December 4, 2017.

* * * * *

[FR Doc. 2017–21383 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 161020985–7181–02]

RIN 0648–XF733

Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is exchanging unused flathead sole and rock sole Community Development Quota (CDQ) for yellowfin

sole CDQ acceptable biological catch (ABC) reserves in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2017 total allowable catch of yellowfin sole in the Bering Sea and Aleutian Islands management area to be harvested.

DATES: Effective October 5, 2017 through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2017 flathead sole, rock sole, and yellowfin sole CDQ reserves specified in the BSAI are 1,552 metric tons (mt), 5,740 mt, and 15,778 mt as established by the final 2017 and 2018 harvest specifications for groundfish in the BSAI (82 FR 11826, February 27, 2017) and revised by flatfish exchange (82 FR 24253, May 26, 2017). The 2017 flathead sole, rock sole, and yellowfin sole CDQ ABC reserves are 5,754 mt, 10,856 mt and 12,128 mt as established by the final 2017 and 2018 harvest specifications for groundfish in the BSAI (82 FR 11826, February 27, 2017) and revised by flatfish exchange (82 FR 24253, May 26, 2017).

The Coastal Villages Region Fund has requested that NMFS exchange 89 mt of flathead sole sole CDQ reserves and 250 mt of rock sole CDQ reserves for 339 mt of yellowfin sole CDQ ABC reserves under § 679.31(d). Therefore, in accordance with § 679.31(d), NMFS exchanges 89 mt of flathead sole CDQ reserves and 250 mt of rock sole CDQ reserves for 339 mt of yellowfin sole CDQ ABC reserves in the BSAI. This action also decreases and increases the TACs and CDQ ABC reserves by the corresponding amounts. Tables 11 and 13 of the final 2017 and 2018 harvest specifications for groundfish in the BSAI (82 FR 11826, February 27, 2017), and revised by flatfish exchange (82 FR 24253, May 26, 2017), are further revised as follows:

TABLE 11—FINAL 2017 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	7,900	7,000	9,000	14,411	47,550	153,639
CDQ	845	749	963	1,463	5,490	16,117
ICA	100	60	10	4,000	5,000	4,500
BSAI trawl limited access	695	619	161	0	0	18,151
Amendment 80	6,259	5,572	7,866	8,949	37,060	114,871
Alaska Groundfish Cooperative	3,319	2,954	4,171	918	9,168	45,638
Alaska Seafood Cooperative	2,940	2,617	3,695	8,031	27,893	69,233

Note: Sector apportionments may not total precisely due to rounding.

TABLE 13—FINAL 2017 AND 2018 ABC SURPLUS, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	2017 Flathead sole	2017 Rock sole	2017 Yellowfin sole	2018 Flathead sole	2018 Rock sole	2018 Yellowfin sole
ABC	68,278	155,100	260,800	66,164	143,100	250,800
TAC	14,411	47,550	153,639	14,500	47,100	154,000
ABC surplus	53,867	107,550	107,161	51,664	96,000	96,800
ABC reserve	53,867	107,550	107,161	51,664	96,000	96,800
CDQ ABC reserve	5,843	11,106	11,789	5,528	10,272	10,358
Amendment 80 ABC reserve	48,024	96,444	95,372	46,136	85,728	86,442
Alaska Groundfish Cooperative for 2017 [1]	4,926	23,857	37,891	n/a	n/a	n/a
Alaska Seafood Cooperative for 2017 [1]	43,098	72,587	57,481	n/a	n/a	n/a

[1] The 2018 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2017.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement 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 requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the flatfish exchange by the Coastal Villages Regional Fund in the BSAI. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised

allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 28, 2017.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–21466 Filed 10–2–17; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 192
Thursday, October 5, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 33 and 35

[Doc. No. AMS–FV–14–0099; FV15–33/35–1]

Regulations Issued Under Authority of the Export Apple Act and Export Grapes and Plums; Changes to Export Reporting Requirements; Withdrawal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule to change the reporting of export certificate information under regulations issued pursuant to the Export Apple Act and the Export Grape and Plum Act. After reviewing and considering the comments received, the agency has decided not to proceed with this action.

DATES: As of October 5, 2017, the proposed rule published on December 5, 2016, at 81 FR 87486, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Shannon Ramirez, Compliance and Enforcement Specialist, or Vincent Fusaro, Compliance and Enforcement Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Shannon.Ramirez@ams.usda.gov* or *VincentJ.Fusaro@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This withdrawal is issued under the Export Apple Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599) (together hereinafter referred to as the ''Export Fruit Acts''). The Export Fruit Acts promote foreign trade of fruit grown in the United States by authorizing the implementation of regulations related to quality, container markings, and inspection requirements. These regulations are contained in 7 CFR part 33 (Regulations Issued under the Export Apple Act) and 7 CFR part 35 (Export Grapes and Plums).

This action withdraws a proposed rule published in the **Federal Register** on December 5, 2016, (81 FR 87486) and reopened for further comment on January 23, 2017, (82 FR 7733) and February 23, 2017, (82 FR 11413) on changes to the reporting of export certificate information under regulations issued under the Export Fruit Acts. Specifically, the proposed rule would have required shippers of apples and grapes exported from the United States that are subject to inspection to enter the certificate number from inspection certificates (*i.e.,* Export Form Certificates) into the Automated Export System (AES). For apples shipped to Canada in bulk containers, which are exempt from inspection requirements, shippers would have been required to enter a special exemption code defined by the Department of Agriculture (USDA) in lieu of entering an Export Form Certificate number. Shippers would also have been required to maintain paper or electronic copies of the certificates and to provide copies of the certificates to the Agricultural Marketing Service (AMS) upon request. AMS is responsible for monitoring apple and grape export shipments, and these proposed regulatory changes would help ensure that these shipments comply with inspection and certification requirements.

In addition, the proposed rule would have defined ''shipper'' and removed the requirement that carriers of exported apples and grapes retain certificates on file (because the requirement to retain the certificates would have shifted to shippers of exported apples and grapes). It would have also removed regulations that are no longer applicable to grape exports and would have added structure and language to clarify the regulations.

Plums are not currently regulated under the Export Grape and Plum Act; therefore, this change would not have impacted shipments of plums exported from the United States.

During the proposed rule's initial 30-day comment period (December 5, 2016, through January 4, 2017), six comments were received. Two of those comments included requests to extend the comment period. To allow further public review of the proposed changes, USDA reopened the comment period for 60 days on January 23, 2017, and then further extended the comment period for an additional 30 days, through April 24, 2017. Four comments were received during the reopened comment period. Two comments were also received on May 1, 2017, one week after the close of the comment period (these two comments, which were in letter form, were dated before the end of the comment period: March 22, 2017, and April 10, 2017). All the comments may be viewed on the internet at *http://www.regulations.gov*. Of the twelve comments received, two requested an extension of the initial comment period (as noted above), five were in support, and five were opposed.

In summary, the five supporting comments were generally brief and in favor of the proposed changes. The opposing comments detailed concerns about the impact of the proposed changes on shippers, specifically, and the export industry, generally. Some commenters noted that the changes would result in a substantive increase in burden and costs to shippers without adding quality benefits, stating that this could lead to reduced efficiency and vitality of export operations. One commenter indicated that requiring a shipper to maintain the export certificates on file would be a duplication of recordkeeping, because those same certificates are maintained for five years by the commenter's state agricultural department. Another commenter noted that the changes would represent a major barrier to trade because of the complicated logistics of ocean shipments of exported apples and could cause economic harm.

Some commenters stated that the proposed rule did not contain quantifiable data that demonstrated non-compliance with the existing requirements, observing that shipments appear to have been properly inspected and certified for years without the proposed additional monitoring to ensure compliance with these requirements. One commenter questioned using a special USDA-defined code in AES for exempt bulk shipments of apples to Canada because it appears to be a temporary workaround that would be used only until a new harmonized tariff code could be developed to identify these exempt shipments; the commenter suggested delaying the change until a permanent solution was developed in light of the non-urgent nature of the change. Some commenters also raised issues about the

entry of information in AES, such as whether shipments bound for Canada require such entry and that it is a shipper's agent or freight forwarder—not a shipper—who enters data into AES. One commenter also recommended that the proposed ''shipper'' definition be more descriptive to provide further clarity in the regulations.

Given the opposing comments received, AMS has determined that the proposed rule changing the reporting requirements under the Export Fruit Acts should not be finalized. AMS intends to conduct outreach with export industry stakeholders and consider other compliance monitoring activities as it reconsiders whether changes will be proposed in the future. Accordingly, the proposed rule to change the reporting of export certificate information under regulations issued pursuant to the Export Fruit Acts published in the **Federal Register** on December 5, 2016, (81 FR 87486) is hereby withdrawn.

List of Subjects in 7 CFR Part 33

Apples, Exports, Pears, Reporting and recordkeeping requirements.

Authority: 48 Stat. 124; 7 U.S.C. 581–590.

List of Subjects in 7 CFR Part 35

Administrative practice and procedure, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

Authority: 74 Stat. 734; 75 Stat. 220; 7 U.S.C. 591–599.

Dated: September 28, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–21183 Filed 10–4–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0523; Airspace Docket No. 17–ACE–9]

Proposed Amendment of Class E Airspace; Fort Scott, KS; and Phillipsburg, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Fort Scott Municipal Airport, Fort Scott, KS, and Phillipsburg Municipal Airport, Phillipsburg, KS. The FAA is proposing this action due to the decommissioning of the Fort Scott non-directional beacon (NDB) and the Phillipsburg NDB and the cancellation of the associated instrument approach procedures. This action would enhance the safety and management of instrument flight rules (IFR) operations at these airports.

DATES: Comments must be received on or before November 20, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2017–0523; Airspace Docket No. 17–ACE–9 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11B, 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 FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 would amend Class E airspace extending upward from 700 feet above the surface at Fort Scott Municipal Airport, Fort Scott, KS, and Phillipsburg Municipal Airport, Phillipsburg, KS, to support IFR operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0523/Airspace Docket No. 17–ACE–9.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in

person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Modifying Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius (reduced from a 7-mile radius) of Fort Scott Municipal Airport, Fort Scott, KS; removing the Fort Scott NDB from the legal description; and removing the extension north of the NDB; and

Modifying Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (reduced from a 7.6-mile radius) of Phillipsburg Municipal Airport, Phillipsburg, KS; removing the Phillipsburg NDB from the legal description; and removing the extension southeast of the NDB.

Airspace reconfiguration is necessary due to the decommissioning of the Fort Scott NDB and the Phillipsburg NDB, the cancellation of the associated instrument approach procedures, and to bring the airspace in compliance with FAA Order 7400.2L, Procedures for Handling Airspace Matters. Controlled airspace is necessary for the safety and management of standard instrument approach procedures for IFR operations at these airports.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, 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.

Regulatory Notices and Analyses

The FAA has determined that this proposed 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 14 CFR 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

* * * * *

ACE KS E5 Fort Scott, KS [Amended]

Fort Scott Municipal Airport, KS

(Lat. 37°47′54″ N., long. 94°46′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fort Scott Municipal Airport.

* * * * *

ACE KS E5 Phillipsburg, KS [Amended]

Phillipsburg Municipal Airport, KS

(Lat. 39°44′09″ N., long. 99°19′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Phillipsburg Municipal Airport.

Issued in Fort Worth, Texas, on September 27, 2017.

Wayne Eckenrode,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2017–21362 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 490

[Docket No. FHWA–2017–0025]

RIN 2125–AF76

National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM follows a series of related rules that established a set of performance measures for State departments of transportation (State DOT) and Metropolitan Planning Organizations (MPO) to use as required by Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Fixing America's Surface Transportation (FAST) Act. In the last of that series of rules, published on January 18, 2017, FHWA established a measure on the percent change in carbon dioxide (CO_2) emissions from the reference year 2017, generated by on-road mobile sources on the National Highway System (NHS) (also referred to as the Greenhouse Gas (GHG) measure). Through this NPRM, FHWA proposes to repeal the GHG measure.

DATES: Comments must be received on or before November 6, 2017. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number

FHWA–2017–0025 by any one of the following methods:

Fax: 1–202–493–2251;

Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590;

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identifier Number (RIN) for this rulemaking (2125–AF76). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical information: Susanna Hughes Reck, Office of Infrastructure, (202) 366–1548; for legal information: Anne Christenson, Office of Chief Counsel, (202) 366–1356, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of the NPRM, all comments received, and all background material may be viewed online at *http://www.regulations.gov.* Electronic retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at *http://www.ofr.gov* and the Government Publishing Office's Web site at *http://www.gpo.gov.*

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I. Executive Summary

A. Purpose of the Regulatory Action

The MAP–21 [1] (Pub. L. 112–141) transforms the Federal-aid highway program by establishing new requirements for performance management to ensure the most efficient investment of Federal transportation funds. The FAST Act [2] (Pub. L. 114–94) continued these requirements. Performance management increases the accountability and transparency of the Federal-aid highway program and provides a framework to support improved investment decisionmaking through a focus on performance outcomes for key national transportation goals.

As part of this mandate, FHWA issued three related national performance management measure rules [3] [4] [5] that established a set of performance measures for State DOTs and MPOs to use to assess performance. In these rules, FHWA established performance measures in 12 areas [6] generalized as follows: (1) Serious injuries per vehicle mile traveled (VMT); (2) fatalities per VMT; (3) number of serious injuries; (4) number of fatalities; (5) pavement condition on the Interstate System; (6) pavement condition on the non-Interstate NHS; (7) bridge condition on the NHS; (8) performance of the Interstate System; (9) performance of the non-Interstate NHS; (10) freight movement on the Interstate System; (11) traffic congestion; and (12) on-road mobile source emissions.

One of the measures FHWA created to assess the performance of the NHS under the National Highway Performance Program (NHPP) is Percent Change in Tailpipe Carbon Dioxide (CO_2) Emissions on the NHS from the Calendar Year 2017 (also referred to as the GHG measure). It was created to advance a policy preference of the prior Administration. It would be calculated using data on fuel use and VMT. The FHWA received a high volume of comments both in support of and opposed to this measure in response to the third NPRM. This measure became effective on DATE, 2017, at 82 FR CITE. After further consideration and review of DOT policy, as well as the statutory provisions, the DOT is proposing to repeal the requirement. This rulemaking provides additional opportunity for public comment and submission of information that will aid FHWA in making this determination.

B. Costs

As part of the rulemaking that was finalized in January 2017, FHWA estimated the incremental costs associated with the new requirements for a GHG Measure that represented a change to current practices of DOT, State DOTs, and MPOs. The FHWA

[1] Moving Ahead for Progress in the 21st Century Act (MAP–21): *https://www.gpo.gov/fdsys/pkg/PLAW-112publ141/html/PLAW-112publ141.htm.*

[2] Fixing America's Surface Transportation (FAST) Act: *https://www.gpo.gov/fdsys/pkg/PLAW-114publ94/html/PLAW-114publ94.htm.*

[3] First performance measure final rule: ''National Performance Management Measures: Highway Safety Improvement Program'' (RIN 2125–AF49): *https://www.gpo.gov/fdsys/pkg/FR-2016-03-15/pdf/2016-05202.pdf.*

[4] Second performance measure final rule: ''National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program'' (RIN 2125–AF53): *https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00550.pdf.*

[5] Third performance measure final rule: ''National Performance Management Measures: Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program'' (RIN 2125–AF54): *https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00681.pdf.*

[6] These areas are listed within 23 U.S.C. 150(c), which requires the Secretary to establish measures to assess performance or condition.

derived the costs of the new requirements by assessing the additional capital needed and the expected increase in the level of labor effort for FHWA, State DOTs, and MPOs to calculate the measure and establish and report GHG measure targets. To develop this estimate, FHWA sought opinions from subject matter experts (SME). Cost estimates were developed based on information received from SMEs. To estimate costs, FHWA multiplied the level of effort, expressed in labor hours, with a corresponding loaded wage rate that varied by the type of laborer needed to perform the activity. Where necessary, capital costs were also included. The 9-year cost discounted at 7 percent to comply with the GHG measure discussed in this document is $11.0 million. By proposing to remove the GHG measure in this rulemaking, FHWA is proposing a deregulatory action that may result in cost-savings of $11.0 million discounted at 7 percent over 9 years.

Table X displays the Office of Management and Budget (OMB) A–4 Accounting statement as a summary of the cost savings associated with repealing the GHG measure.

TABLE X—OMB A–4 ACCOUNTING STATEMENT

Category	Estimates			Units			Source/citation
	Primary	Low	High	Year dollar	Discount rate %	Period covered (years)	
Benefits							
Annualized Monetized ($ millions/year).	None	None	None	NA	7	NA	Not Quantified.
	None	None	None	NA	3	NA	
Annualized Quantified	None	None	None	NA	7	NA	Not Quantified.
	None	None	None	NA	3	NA	
Qualitative	More informed decisionmaking on project, program, and policy choices.						NPRM RIA.
Costs							
Annualized Monetized ($/year)	−$1,682,339	.....	.....	2014	7	9	NPRM RIA.
	−$1,655,267	.....	.....	2014	3	9	
Annualized Quantified	None	None	None	2014	7	9	NPRM RIA.
	None	None	None	2014	3	9	
Qualitative							
Transfers	None						
From/To	From:			To:			
Effects							
State, Local, and/or Tribal Government.	−$1,682,339	.....	.....	2014	7	9	NPRM RIA.
	−$1,655,267	.....	.....	2014	3	9	
Small Business	Not expected to have a significant impact on a substantial number of small entities.			NA	NA	NA	NPRM RIA.

II. Acronyms and Abbreviations

Acronym or abbreviation	Term
APA	Administrative Procedure Act.
CFR	Code of Federal Regulations.
CH_4	Methane.
CMAQ	Congestion Mitigation and Air Quality Improvement Program.
CO_2	Carbon dioxide.
DOT	U.S. Department of Transportation.
EO	Executive Order.
EERPAT	Energy and Emissions Reduction Policy Analysis Tool.
EIA	Energy Information Agency, U.S. Department of Energy.
FAST Act	Fixing America's Surface Transportation Act.
FHWA	Federal Highway Administration.
FR	Federal Register.
GHG	Greenhouse gas.
HPMS	Highway Performance Monitoring System.
HFCs	Hydrofluorocarbons.
MAP–21	Moving Ahead for Progress in the 21st Century Act.
MOVES	Motor Vehicle Emission Simulator.
MPO	Metropolitan Planning Organizations.
N_2O	Nitrous oxide.
NHPP	National Highway Performance Program.
NHS	National Highway System.
NPRM	Notice of proposed rulemaking.
NPMRDS	National Performance Management Research Data Set.
OMB	Office of Management and Budget.
PRA	Paperwork Reduction Act of 1995.
RIA	Regulatory Impact Analysis.
RIN	Regulatory Identification Number.
SMEs	Subject Matter Experts.
State DOTs	State departments of transportation.
U.S.C.	United States Code.
VMT	Vehicle miles traveled.

III. Background

The third performance measure NPRM was published on April 22, 2016 (81 FR 238060).[7] The third performance

[7] Third performance measure NPRM: ''Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and

Continued

measure NPRM proposed a set of national measures for State DOTs to use to assess the performance of the Interstate and non-Interstate NHS to carry out the NHPP; to assess freight movement on the Interstate System; and to assess traffic congestion and on-road mobile source emissions for the purpose of carrying out the CMAQ Program.

In the preamble to the third performance measure NPRM, FHWA sought public comment on whether and how to establish a CO_2 emissions measure in the final rule. The FHWA asked a series of questions regarding the design and implementation of a GHG measure and whether one should be established.

The FHWA received thousands of comments on whether to establish such a measure and how a measure should be designed and implemented. Supporting comments came from 9 State DOTs, 24 MPOs, 19 U.S. Senators, 48 Members of the U.S. House of Representatives, over 100 cities, numerous local officials, over 100 businesses, 91,695 citizens, and over 100 public interest, non-profit and advocacy organizations. Some State DOTs and MPOs already use GHG emissions as a performance measure.

Comments against a GHG measure were submitted by 10 State DOTs, 2 MPOs, 5 U.S. Senators, 31 Members of the U.S. House of Representatives, and 27 transportation and infrastructure industry associations. In addition, nine State DOTs and three industry associations requested that FHWA not establish any performance measures not explicitly authorized in legislation, because GHG is not identified in the legislation.

Several of the commenters in both groups addressed whether FHWA has the legal authority to establish a GHG measure and whether such measure could be established in this rulemaking.

The FHWA published the third performance measure final rule on January 18, 2017, at 82 FR 5971.[8] The GHG policy established in the final rule was the measure discussed in the third performance measure NPRM: total annual tons of CO_2 emissions from all on-road mobile sources. The rule requires State DOTs to calculate the measure by multiplying motor fuel sales volumes by emissions factors of CO_2 per gallon of fuel and percentage VMT on the NHS. A metropolitan planning areawide GHG metric may be: (1) A share of the State's (or States') VMT as a proxy for that metropolitan planning area share of CO_2 emissions; (2) VMT estimates along with MOVES[9] emissions factors; (3) FHWA's Energy and Emissions Reduction Policy Analysis Tool (EERPAT) model;[10] or (4) other method the MPO can demonstrate has valid and useful results for CO_2 measurement.

On January 30, 2017, President Donald J. Trump issued Executive Order 13771, entitled, ''Reducing Regulation and Controlling Regulatory Costs,''[11] which required Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. Additionally, on February 24, 2017, the President issued Executive Order 13777, entitled, ''Enforcing the Regulatory Reform Agenda,''[12] which required Federal agencies to designate a Regulatory Reform Office and a Regulatory Reform Task Force charged with reviewing agency regulations. Furthermore, the Administration is considering a number of policy changes with respect to climate change. For example, the Administration has announced its intent to withdraw from the Paris Accords. Pursuant to Executive Order 13771 and 13777, the DOT commenced a review of existing and pending regulations, which included the third performance measure final rule, to determine whether changes would be appropriate to eliminate duplicative regulations and streamline regulatory processes. Based upon this review, DOT identified the GHG measure of the third performance measure final rule as being potentially duplicative of existing efforts in some States, and burdensome. Also, the performance management statute (23 U.S.C. 150) does not explicitly require a GHG measure. For these reasons, this NPRM proposes to repeal the GHG measure.

This rulemaking proposes to repeal the GHG measure, while seeking additional public comment on whether to retain, or revise the GHG measure established in the third performance measure final rule. This rulemaking seeks additional information that may not have been available to the Agency during the development of the final rule. Additional information will aid FHWA in determining whether the measure should be repealed, retained, or revised.

During the first public comment period, several commenters argued that, should FHWA decide to establish a GHG measure, it should do so through a separate rulemaking. They claimed that the third performance measure NPRM did not provide sufficient detail about the type of measure FHWA might adopt for them to comment on the issue meaningfully. The FHWA believes that sufficient notice was provided in the third performance measure NPRM under the Administrative Procedure Act (APA); however, we are mindful that the third performance measure NPRM did not include proposed regulatory text for the GHG measure. Although the APA does not require proposed regulatory text to be included in the third performance measure NPRM, FHWA acknowledges that the GHG measure was presented differently than the other measures in that it was discussed in the preamble using a series of questions to limit the scope of the proposal. Some commenters stated that they found it difficult to formulate meaningful comments using this approach alone.

In the third performance measure final rule preamble, FHWA recognized that the GHG measure chosen—the percent change in tailpipe CO_2 emissions on the NHS compared to the Calendar Year 2017 level—is imperfect. It is measured by calculating fuel sales and multiplying the associated CO_2 emissions by the proportion of VMT that takes place on the NHS. As noted in the final rule preamble, this methodology is not a perfect proxy, as speeds, operating conditions, and vehicle types on the NHS differ from those that are on other roads and differ between States. The FHWA indicated that the methodology adopted was a balance between the competing goals of simplicity and precision. We request comments on whether the lack of precision in the methodology markedly impedes the ability of State DOTs and MPOs to use the measure and associated targets in evaluating system performance and making investment decisions.

The FHWA is interested in whether data are available to more directly measure GHG emissions effects of NHS projects undertaken by States or MPOs. The FHWA is responsible for establishing the data elements that are necessary to collect and maintain the standardized data to carry out a performance-based approach under 23 U.S.C. 150(c)(3)(A)(iv). We request comments on whether the data used to calculate the measure is precise enough

Congestion Mitigation and Air Quality Improvement Program'' (RIN 2125–AF54): *https://www.gpo.gov/fdsys/pkg/FR-2016-04-22/pdf/2016-08014.pdf.*

[8] *https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00681.pdf.*

[9] EPA's Motor Vehicle Emissions Simulator (MOVES): *https://www.epa.gov/moves.*

[10] FHWA's Energy and Emissions Reduction Policy Analysis Tool (EERPAT) *https://www.planning.dot.gov/FHWA_tool/default.aspx.*

[11] 82 FR 9339, February 3, 2017. *https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf.*

[12] 82 FR 10691, February 14, 2017. *https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda.*

to meet these goals. Please identify any information that may mitigate some of the limitations of the proposed GHG measure.

In addition, commenters are encouraged to provide information regarding whether the measure, including the methodology adopted in the final rule, provides meaningful utility for assessment of environmental performance of the NHS by States and MPOs. Please provide any information or data that would justify the utility of the measure relative to the increased burden to the States and MPOs reporting this information.

Finally, FHWA also requests input from States and MPOs on the potential costs imposed by the addition of this measure in the third performance measure final rule. Because a GHG measure was not proposed in the NPRM, the costs were not presented in that economic analysis. The FHWA did provide an assessment of the benefits and costs of all the measures in the final rule. As part of this rulemaking, FHWA is analyzing the costs associated solely with the GHG measure, and the attendant savings that would result from its repeal. The FHWA requests data from States and MPOs on the costs imposed due solely to the addition of this measure. Given that several States are already conducting efforts in this area, FHWA requests information on whether the GHG measure is a duplicative requirement and whether FHWA's estimate of the cost savings associated with a repeal of the GHG measure are accurate. Additionally, FHWA requests information from States not currently conducting similar efforts on the burdens this measure would impose.

Further, in the final rule, the GHG measure was adopted under 23 U.S.C. 150(c)(3) (NHPP) and not 23 U.S.C. 150(c)(5) (CMAQ). As the measure is under the NHPP program, State DOTs are subject to a significant progress determination if they fail to achieve their targets and, if they fail to make significant progress, additional reporting requirements. Because of these potential burdens, FHWA requests comments on any costs to States associated with the NHPP significant progress determination for the GHG measure.[13]

IV. Rulemaking Analyses and Notices

A. Rulemaking Analysis and Notices Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order (E.O.) 12866 and within the meaning of DOT regulatory policies and procedures due to the significant public interest in regulations related to performance management. It is anticipated that the economic impact of this rulemaking will not be economically significant within the meaning of E.O. 12866 as discussed below. This action complies with E.O.s 12866, 13563, and 13771 to improve regulation. This action is considered significant because of widespread public interest in the transformation of the Federal-aid highway program to be performance-based, although it is not economically significant within the meaning of E.O. 12866.

The FHWA considers this proposed rule to be an E.O. 13771 deregulatory action, resulting in $11.0 million in cost-savings discounted at 7 percent over 9 years. Details on the estimated cost savings of this proposed rule are presented in the RIA (or regulatory impact analysis), which may be accessed from the docket (docket number FHWA–2013–0054). The RIA evaluates the economic impact, in terms of costs and benefits, on Federal, State, and local governments, as well as private entities regulated under this action, as required by E.O. 12866 and E.O. 13563. However, the RIA does not attempt to quantify any changes from improved decisionmaking that would result in benefits if the GHG measure requirement were retained.

Estimated Cost Savings of Repealing the GHG Measure

To estimate cost savings from repealing the GHG measure, FHWA assessed the level of effort, expressed in labor hours and categories, and the capital needed to comply with the requirement as provided in the third performance management final rule. Level of effort by labor category is monetized with loaded wage rates to estimate total costs.

Table X displays the total cost for the GHG measure for the 9-year study period (2018–2026). The FHWA chose an 9-year analysis period and displayed the values in 2014 dollars in order to correlate the values presented in this NPRM with those presented in the third performance measure final rule. Total costs are estimated to be $10,960,828 discounted at 7 percent, and $12,888,091 discounted at 3 percent.

TABLE X—TOTAL COST SAVINGS FROM REPEALING THE GHG MEASURE

Cost components	9-Year total cost		Annualized cost	
	7%	3%	7%	3%
Section 490.105–490.109—Reporting Requirements	$9,090,263	$10,652,791	$1,395,232	$1,368,179
Establish and Update Performance Targets	6,368,958	7,392,818	977,549	949,488
Reporting on Performance Targets Progress	2,573,869	3,068,421	395,054	394,089
Assess Significant Progress Toward Achieving Performance Targets	147,435	191,552	22,629	24,602
Section 490.511—Calculation of System Performance Metrics	1,821,862	2,177,239	279,631	279,631
Calculate Annual Total Tailpipe CO_2 Emissions	1,821,862	2,177,239	279,631	279,631
Section 490.513—Calculation of System Performance Measures	48,703	58,061	7,475	7,457
Calculate % Change in Tailpipe CO_2 Emissions the NHS Compared to the Calendar Year 2017 Level Perf. Measure	48,703	58,061	7,475	7,457
Total Cost of Final Rule	10,960,828	12,888,091	1,682,339	1,655,267

This action complies with the principles of E.O. 13563. After evaluating the costs and benefits of the rule, FHWA believes that the cost savings from this rulemaking would exceed the foregone benefits. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these

[13] 23 CFR 490.109.

changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities. The rule addresses the obligation of Federal funds to State DOTs for Federal-aid highway projects. The rule affects two types of entities: State governments and MPOs. State governments do not meet the definition of a small entity under 5 U.S.C. 601, which have a population of less than 50,000.

The MPOs are considered governmental jurisdictions, and to qualify as a small entity they would need to serve less than 50,000 people. The MPOs serve urbanized areas with populations of 50,000 or more. As discussed in the RIA, the rule is expected to impose costs on MPOs that serve populations exceeding 200,000. Therefore, the MPOs that incur economic impacts under this rule do not meet the definition of a small entity.

I hereby certify that this regulatory action would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The FHWA has determined that this action does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of $151 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

D. Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this action in accordance with the principles and criteria contained in E.O. 13132. The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

E. Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

F. Paperwork Reduction Act

Under the PRA (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. The DOT has analyzed this action under the PRA and has determined that this rulemaking does not contain collection of information requirements for the purposes of the PRA. If finalized, this proposal would reduce PRA burdens associated with this measure.

G. National Environmental Policy Act

The FHWA has analyzed this action for the purpose of NEPA, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

H. Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this action under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under E.O. 12630.

I. Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Executive Order 13045 (Protection of Children)

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

K. Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under E.O. 13175, dated November 6, 2000, and believes that the action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The rulemaking addresses obligations of Federal funds to State DOTs for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

L. Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

M. Executive Order 12898 (Environmental Justice)

The E.O. 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

N. Regulation Identifier Number

An RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 490

Bridges, Highway safety, Highways and roads, Reporting and recordkeeping requirements.

Issued in Washington, DC, on September 29, 2017 under authority delegated in 49 CFR 1.85.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to amend 23 CFR part 490 to read as follows:

PART 490—NATIONAL PERFORMANCE MANAGEMENT MEASURES

■ 1. The authority citation for part 490 continues to read as follows:

Authority: 23 U.S.C. 134, 135, 148(i), and 150; 49 CFR 1.85.

Subpart A—General Information

§ 490.105 [Amended].

■ 2. Amend § 490.105 by removing and reserving paragraphs (c)(5) and (d)(1)(v).

§ 490.107 [Amended].

■ 3. Amend § 490.107 by removing and reserving paragraphs (b)(1)(ii)(H), (b)(2)(ii)(J), (b)(3)(ii)(I), and (c)(4).

■ 4. Amend § 490.109 by removing and reserving paragraphs (d)(1)(v) and (f)(1)(v) and revising paragraph (d)(1)(vi) to read as follows:

§ 490.109 Assessing significant progress toward achieving the performance targets for the National Highway Performance Program and the National Highway Freight Program.

* * * * *

(d) * * * (1) * * *

(vi) Baseline condition/performance data contained in HPMS and NBI of the year in which the Baseline Period Performance Report is due to FHWA that represents baseline conditions/performances for the performance period for the measures in §§ 490.105(c)(1) through (4).

* * * * *

Subpart E—National Performance Management Measures to Assess Performance of the National Highway System

§ 490.503 [Amended].

■ 5. Amend § 490.503 by removing and reserving paragraph (a)(2).

§ 490.505 [Amended].

■ 6. Amend § 490.505 by removing the definition for ''Greenhouse gas (GHG).''

§ 490.507 [Amended].

■ 7. Amend § 490.507 by removing and reserving paragraph (b).

§ 490.509 [Amended].

■ 8. Amend § 490.509 by removing paragraphs (f)–(h).

§ 490.511 [Amended].

■ 9. Amend § 490.511 by removing and reserving paragraphs (a)(2), (c), (d), and (f).

§ 490.513 [Amended].

■ 10. Amend § 490.513 by removing paragraph (d).

[FR Doc. 2017–21442 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0386; FRL–9968–75–Region 7]

Approval of Nebraska Air Quality Implementation Plans; Adoption of a New Chapter Under the Nebraska Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by the state of Nebraska on November 14, 2011. Nebraska is adding a new chapter titled ''Visibility Protection'' which provides Nebraska authority to implement Federal regulations relating to Regional Haze and Best Available Retrofit Technology (BART). The chapter incorporates by reference EPA's Guidelines for BART Determiniations under the Regional Haze Rule. The revision to the SIP meets the visibility component of the Clean Air Act (CAA).

DATES: Comments on this proposed action must be received in writing by November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0386, to *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments connot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7391, or by email at *crable.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: This document proposes to take action to add chapter 43, ''Visibilty Protection''. We have published a direct final rule approving the State's SIP revision in the ''Rules and Regulations'' section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

[FR Doc. 2017–21381 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0138; FRL–9968–84-Region 5]

Air Plan Approval; Illinois; Nonattainment Plans for the Lemont and Pekin SO_2 Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions, which Illinois submitted to EPA on March 2, 2016, and supplemented on August 8, 2016 and May 4, 2017, for attaining the 2010 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS) for the Lemont and Pekin areas. These revisions (herein called the nonattainment plans or plans) include Illinois' attainment demonstration and other elements required under Clean Air Act (CAA) for the two areas. In addition to an attainment demonstration, the plans address: The requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS; reasonably available control measures and reasonably available control technology (RACM/RACT); emission inventories; and contingency measures. EPA further proposes to conclude that Illinois has demonstrated that the plans' provisions provide for attainment of the 2010 1-hour primary SO_2 NAAQS in the Lemont and Pekin areas by the attainment date of October 4, 2018.

DATES: Comments must be received on or before November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0138 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: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

This supplementary information section is arranged as follows:

I. Why was Illinois required to submit SO_2 plans for the Lemont and Pekin areas?
II. Requirements for SO_2 Nonattainment Area Plans
III. Modeled Attainment Plans
IV. Review of Residual and Distillate Fuel Oil Sulfur Content Limits
V. Review of Other Plan Requirements
VI. EPA's Proposed Action
VII. Incorporation by Reference
VIII. Statutory and Executive Order Reviews

I. Why was Illinois required to submit SO_2 plans for the Lemont and Pekin areas?

On June 22, 2010, EPA promulgated a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. *See* 75 FR 35520, codified at 40 CFR 50.17(a)–(b). On August 5, 2013, EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Lemont and Pekin areas within Illinois. *See* 78 FR 47191, codified at 40 CFR part 81, subpart C. These area designations were effective October 4, 2013. Section 191 of the CAA directs states to submit SIPs for areas designated as nonattainment (also referred to as nonattainment plans or plans) for the SO_2 NAAQS to EPA within 18 months of the effective date of the designation, *i.e.,* by no later than April 4, 2015, in this case. These plans are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than five years from the effective date of designation, which in this case is October 4, 2018.

For a number of areas, EPA published notice on March 18, 2016, that the pertinent states had failed to submit the required SO_2 nonattainment plan by the 18-month submittal deadline. *See* 81 FR 14736. However, because Illinois had submitted its SO_2 nonattainment plans before that date, EPA did not make such a finding with respect to the Lemont and Pekin areas.

Illinois submitted nonattainment plans for the Lemont and Pekin areas on March 2, 2016 and submitted supplemental information on August 8, 2016 and May 4, 2017.[1] The remainder of this proposed rule describes the requirements that nonattainment plans must meet in order to obtain EPA approval, provides a review of the state's plan with respect to these requirements, and describes EPA's proposed action on the state's plans.

II. Requirements for SO_2 Nonattainment Area Plans

Nonattainment plans must meet the applicable requirements of the CAA, specifically CAA sections 172, 191 and 192. On April 23, 2014, EPA issued guidance for meeting these statutory requirements, in a document entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' (2014 SO_2 Guidance) available at *https://www.epa.gov/sites/production/files/2016–06/documents/20140423guidance_nonattainment_sip.pdf*. In the 2014 SO_2 Guidance, EPA described the statutory requirements for a complete nonattainment area SIP under the 2010 SO_2 NAAQS, which includes: An accurate emissions inventory of current emissions for all sources of SO_2 within the nonattainment area; an attainment demonstration; demonstration of RFP; implementation of RACM (including RACT); a new source review (NSR) permit program; and adequate contingency measures for the affected area.

In order for EPA to fully approve a SIP as meeting the requirements of CAA sections 172, 191 and 192, the SIP for the affected area must demonstrate, to EPA's satisfaction, that each of the aforementioned requirements are met. In addition, the SIP must meet the applicable regulatory procedural and substantive requirements set forth in EPA's regulations at 40 CFR part 51. Under CAA sections 110(l) and 193,

[1] Illinois' final rule amended other state regulations that are not part of Illinois' nonattainment plans for the 2010 SO_2 NAAQS and were not submitted to EPA as part of this action.

EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area that is a nonattainment area for any air pollutant may be modified in any manner unless it insures equivalent or greater emission reductions of such air pollutant.

A. Emissions Inventory

As required under CAA section 172(c)(3), the state must develop and submit a comprehensive, accurate and current inventory of actual emissions from all sources of SO_2 emissions in each nonattainment area. This inventory should be consistent with EPA's most recent emissions inventory data requirements as codified at 40 CFR part 51, subpart A. The emissions inventory serves as the foundation for modeling and other analyses that enable states to: (1) Estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area; (2) assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures; and ultimately 3) demonstrate that the adopted control measures provide for attainment of the SO_2 standard by the attainment date.

B. Attainment Plan

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that SIPs must meet. SO_2 nonattainment plans must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable and necessary emission controls; and (2) a modeling analysis that meets the requirements of 40 CFR part 51, appendix W which demonstrates that these emission limits and control measures provide for timely attainment of the SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. The 2014 SO_2 Guidance advises that compliance deadlines for these emission limits should be by, or before, January 1, 2017, in order to provide for air quality data at or below the level of the standard for at least one full calendar year before the attainment deadline. In cases where the necessary emission limits have not previously been made a part of the SIP, or have not otherwise become federally enforceable, the plan needs to include the necessary enforceable limits in adopted form suitable for incorporation into the SIP in order for it to be approved by EPA. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures, and must be fully enforceable.

The 2014 SO_2 Guidance recommends that the emission limits be expressed as short-term average limits not to exceed the averaging time for the applicable NAAQS that the limit is intended to help maintain (*e.g.,* addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. *See* 2014 SO_2 guidance, pp. 22 to 39. The guidance recommends that—should states utilize longer averaging times for certain sources—the longer term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment.

The 2014 SO_2 Guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set, comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this conclusion, EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22 to 39, and Appendices B, C and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO_2 NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single exceedance does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer term average could cause exceedances, and if so, the resulting frequency and magnitude of such exceedances, and whether EPA can have reasonable confidence that a properly set longer term average limit will provide that the average fourth highest daily maximum value will be at or below 75 ppb. A synopsis of EPA's review of how to determine whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in light of the NAAQS' form for determining attainment at monitoring sites follows.

For SO_2 nonattainment plans based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.,* the emission rate at which an ''average year'' [2] shows only three, not four days with maximum hourly levels exceeding 75 ppb) is labeled the ''critical emission value.'' The modeling process for identifying the critical emissions value inherently considers the numerous variables that affect ambient concentrations of SO_2, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions due to, for example, variations in fuel sulfur content and operating rate that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer term emission limits may allow short periods with emissions above the critical emissions value, which in turn would create the possibility of a NAAQS exceedance occurring when it otherwise would not if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, EPA believes that the approach set forth in the 2014 SO_2 Guidance addresses this concern. First,

[2] An ''average year'' is used to mean a year with average air quality. While 40 CFR 50 appendix T provides for averaging three years of 99th percentile daily maximum values (*e.g.,* the fourth highest maximum daily concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' in order to simplify the illustration of relevant principles.

from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because the Agency has recommended that the longer term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value) and that takes the source's emissions profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality when the guidance is followed.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer term average limit scenario, the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an ''average year,'' compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer term limit scenario. This result arises because the longer term limit requires lower emissions most of the time because the limit is set well below the critical emission value, so a source complying with an appropriately set longer term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source always emits 1000 pounds of SO_2 per hour, which causes air quality to be at the level of the NAAQS (*i.e.,* causes a design value of 75 ppb). Suppose further that in an ''average year,'' these emissions cause the five highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-day average emission limit of 700 pounds per hour. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1000 pounds per hour, but with a typical emissions profile emissions would much more commonly be between 600 and 800 pounds per hour. In this simplified example, assume a zero background concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions happen on what critical hours, but suppose that emissions on these 5 days are 800 pounds per hour, 1100 pounds per hour, 500 pounds per hour, 900 pounds per hour, and 1200 pounds per hour, respectively. This is a conservative example because the average of these emissions, 900 pounds per hour, is well over the 30-day average emission limit. These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred, but the third and fourth days would not have exceedances that otherwise would have occurred. In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in appendix B of EPA's 2014 SO_2 Guidance, EPA found that the requirement for lower average emissions is highly likely to yield better air quality than is required with a comparably stringent 1-hour limit.

Based on analyses described in appendix B of the 2014 SO_2 Guidance, EPA has concluded that an emission profile with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value.

EPA must then evaluate whether this approach—which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value—meets the requirement in section 110(a)(1) and 172(c)(1) for state implementation plans to ''provide for attainment'' of the NAAQS. For SO_2, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to determine not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value. Additional policy considerations, such as the desirability of accommodating real world emissions variability without significant risk of violations as in this case, are also appropriate factors for EPA to weigh in determining whether there is a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, especially given the high likelihood that a limit averaged over as long as 30 days, determined in accordance with EPA's guidance, should result in attainment, EPA believes as a general matter that such limits, if appropriately determined, can reasonably be considered to provide for attainment of the 2010 SO_2 NAAQS.

The 2014 SO_2 Guidance offers specific recommendations for determining an appropriate longer term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the critical emission value), and applies an adjustment factor to determine the (lower) level of the longer term average emission limit that would be estimated to have a stringency

comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, calculated according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer term average emission limit that may be considered comparably stringent.[3] The guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer term emission rate limit.

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's *Guideline on Air Quality Models* (40 CFR part 51, appendix W*).*[4] In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (including estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A to the 2014 SO_2 Guidance. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (*see* appendix W to 40 CFR part 51) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For a short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, follow the form of the standard, and be calculated as described in section 2.6.1.2 of the August 23, 2010, clarification memo on ''Applicability of appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (EPA, 2010).

C. RACM/RACT

To be approved by EPA, the SIP must provide for attainment of the standard based on SO_2 emission reductions from control measures that are permanent and enforceable.[5] At a minimum, states must consider all RACM and RACT measures that can be implemented in light of the attainment needs for the affected area(s), and include all necessary measures in order to attain the NAAQS.[6] *See* ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule,'' 57 FR 13498, 13547 (Apr. 16, 1992) (''General Preamble'').

D. New Source Review (NSR)

Part D of title I of the CAA prescribes the procedures and conditions under which a new major stationary source or major modification may obtain a preconstruction permit in an area designated nonattainment for any criteria pollutant. The nonattainment NSR permitting requirements in section 172(c)(5) and 173 of the CAA are among ''the requirements of this part'' to be submitted to EPA as part of a revised SIP for a nonattainment area within 18 months of the effective date of a designation or redesignation to nonattainment. Air agencies that already have a nonattainment NSR permitting program applicable to areas previously designated nonattainment on the basis of the previous SO_2 NAAQS (annual, 24-hour or 3-hour averaging periods) may be able to use that existing program to authorize the construction and modification of major stationary sources of SO_2 that would locate in a new 2010 SO_2 nonattainment area.[7] However, because of the limited number of nonattainment areas designated under the previous SO_2 NAAQS, and since nonattainment NSR rules in some states may not automatically address areas designated nonattainment for newly promulgated air quality standards, some air agencies may not have nonattainment NSR rules that apply when new nonattainment areas for the 1-hour primary SO_2 standard are designated. In such cases, within 18 months of designation, such agencies would need either to revise their existing nonattainment NSR programs or to develop new programs to enable the permitting of any major stationary source of SO_2 locating in a nonattainment area under the 2010 SO_2 NAAQS.

E. RFP

Section 171(1) of the CAA defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date.'' As EPA has previously explained, this definition is most appropriate for pollutants that are emitted by numerous and diverse sources, where the relationship between any individual source and the overall air quality is not explicitly quantified, and where the emission reductions necessary to attain the NAAQS are inventory-wide. General Preamble, at 13547. EPA has also previously

[3] For example, if the critical emission value is 1000 pounds of SO_2 per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 pounds per hour.

[4] EPA published revisions to the *Guideline on Air Quality Models* on January 17, 2017.

[5] *See* section 110(a)(2)(A) of the CAA.

[6] Section 172(c)(1) of the CAA provides that ''Such plan shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.''

[7] The annual and 24-hour primary SO_2 NAAQS generally will remain in effect for 1 year following the effective date of the initial area designations for the new 1-hour 2010 SO_2 NAAQS. However, the annual and/or 24-hour SO_2 NAAQS will remain in place for a longer period of time for any current nonattainment area for the annual or 24-hour SO_2 NAAQS, and any area for which a state has not fulfilled the requirements for a SIP call. *See* 40 CFR 50.4(e).

explained that the definition is generally less pertinent to pollutants like SO_2 that usually have a limited number of sources affecting areas of air quality that are relatively well defined, and emissions control measures for such sources result in swift and dramatic improvement in air quality. *Id.* For SO_2, there is usually a single ''step'' between pre-control nonattainment and post-control attainment. Therefore, for SO_2, with its discernible relationship between emissions and air quality, and significant and immediate air quality improvements, RFP is best construed as ''adherence to an ambitious compliance schedule.'' *Id.* This means that the state must ensure that affected sources implement appropriate control measures as expeditiously as practicable in order to ensure attainment of the standard by the applicable attainment date.

F. Contingency Measures

In accordance with section 172(c)(9) of the CAA, SO_2 nonattainment plans must include contingency measures in order to obtain EPA approval. These measures must be fully adopted and should contain trigger mechanisms and an implementation schedule. In addition, they should be included in the SIP as measures that will take effect without further action by the state or EPA. Contingency measures are implemented if RFP targets are not achieved, or if the nonattainment area has not reached attainment by the applicable attainment date. Where an area has already achieved attainment by the attainment date, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment.

EPA has explained that planning for SO_2 poses special considerations. SO_2 control measures are based on what is directly and quantifiably necessary to attain the NAAQS, and it would be unlikely for an area to implement the necessary emissions control yet fail to attain the NAAQS. General Preamble at 13547. Therefore, for SO_2 nonattainment plans, EPA guidance also observes that the contingency measures requirement can be satisfied by the air agency having a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an 'aggressive' follow-up for compliance and enforcement.'' *Id.* The 2014 SO_2 Guidance provides further explanation of the context in which such an approach may be appropriate for addressing section 172(c)(9) contingency measure requirements for SO_2. This approach for meeting contingency measure requirements does not preclude a state from requiring additional contingency measures that are enforceable and appropriate for a particular source or source category. General Preamble at 13547.

III. Modeled Attainment Plans

The following discussion evaluates various features of the modeling and other elements of Illinois' nonattainment plans for the Lemont and Pekin areas.

A. Model Selection

Illinois' attainment demonstrations used AERMOD, the preferred model for these applications. Illinois used version 14134 of this model, using regulatory default mode, with no beta options. This version of AERMOD was the recommended version at the time the state conducted its nonattainment planning, and in any case the results of this version are likely to be similar to those that more recent versions would provide, so EPA finds use of this version of AERMOD to be acceptable.

Illinois performed an Auer's land use analysis which indicates that the Lemont area is approximately 79 percent rural, and the Pekin area is approximately 88 percent rural. A technical support document provides figures, taken from Illinois' submittal, that show the land use in the Lemont and Pekin areas, respectively, illustrating the areas that are characterized as rural, not urban, in the Auer classification system. EPA finds it appropriate to model these areas as rural areas.

B. Meteorological Data

Illinois chose the Chicago O'Hare surface station (WBAN #94846) and the Davenport, Iowa upper air station (WBAN #94982) as the most representative meteorological stations for the Lemont area. Illinois chose the Peoria surface station (WBAN #14842) and Lincoln upper air station (WBAN #048233) as the most representative meteorological stations for the Pekin area. These are the closest National Weather Service surface stations to each respective area. The State determined these stations to be the most representative for the respective modeling domains. The upper air stations were chosen on the basis of regional representativeness. EPA finds Illinois' choices of surface and upper air meteorological stations appropriate based on: (1) The suitability of meteorological data for the study area; and (2) the actual similarity of surface conditions and surroundings at the emissions source/receptor impact area compared to the locations of the meteorological instrumentation towers.

C. Emissions Data

Illinois chose to include emissions data from all permitted sources within each modeling domain, which consists of a 50 kilometer radius circumscribing an area centered on the violating monitor. Illinois chose not to evaluate which sources would ''cause a significant concentration gradient'' (40 CFR part 51, appendix W), because that analysis would result in a greater modeling burden, along with significant subjectivity. The inclusion of all permitted sources assures that Illinois' modeled concentrations are conservative, in that it adds impacts that may also be represented in the background concentration.

Except for the Powerton Generating Station (Powerton) located in the Pekin area, the emission limits for newly limited sources, as outlined in Illinois' attainment demonstration, correspond to the revised sulfur limitations on a 1-hour basis and are found in 35 Illinois Administrative Code Part 214. The applicable emission limit for Powerton is established on a 30-day average basis and is lower than the modeled 1-hour attainment emission rate (the critical emission value) by virtue of application of an adjustment factor determined and applied in accordance with the 2014 SO_2 Guidance.

Specifically, as discussed further below, the 30-day average limit is about 58 percent of the modeled 1-hour emission rate, or, conversely, the modeled emission rate (the critical emission value) is about 74 percent higher than the 30-day average limit. The emission limits for sources in the Lemont area are all on a 1-hour average basis and equal the modeled emissions rate. EPA finds Illinois' choice of included sources and modeled emissions appropriate.

D. Emission Limits

An important prerequisite for approval of an attainment plan is that the emission limits that provide for attainment be fully enforceable. The revised limits for significant contributing sources are codified in Illinois' sulfur limitations rule at 35 Illinois Administrative Code Part 214, Subpart AA, titled ''Requirements for Certain SO_2 Sources.'' The rules also include associated monitoring, testing, and recordkeeping and reporting requirements. A summary of the limits, showing the sum of the allowable hourly emissions for each plant, is shown in Table 1. As shown in this table, the emission limit for Powerton is

expressed as a 30-day average limit. Other limits in the rule are expressed as 1-hour average limits. EPA's review of Illinois' nonattainment plan addresses the use of these limits, both with respect to the general suitability of using such limits in attainment demonstrations, and whether Illinois has demonstrated that the particular limits included in the plan provide for attainment.

TABLE 1—EMISSION LIMITS IN SUBMITTED ILLINOIS RULES

Facility	Sum of allowable emissions (pounds/hour)	Averaging time for limits
Limits for Sources in or near Lemont Area		
Ingredion	175.91	1-hour.
Midwest Generation Joliet	855.26	1-hour.
Midwest Generation Will County	5,145.14	1-hour.
Owens Corning	82.78	1-hour.
Oxbow Midwest Calcining	187.00	1-hour.
Limits for Sources in or near Lemont Area		
Aventine	26.80	1-hour.
Illinois Power E.D. Edwards	4,856	1-hour.
Midwest Generation Powerton	3,452	30-day.

Illinois also modeled a number of other sources in its attainment demonstration, basing allowable emissions on limits established in state permits. EPA addresses the enforceability of the limits in the plans and Illinois' use of a 30-day average emission limit for Powerton below.

1. Enforceability

In preparing its plans, Illinois adopted revisions to a previously approved state regulation governing emissions of SO_2. These rule revisions were adopted by the Illinois Pollution Control Board following established, appropriate public review procedures. In addition, the rule revisions provide unambiguous, permanent emission limits, expressed in pounds per hour of allowable SO_2 emissions, that, if exceeded by a source, would be clear grounds for an enforcement action.

In comments to the state, Sierra Club requested that the rule being adopted by Illinois ''incorporate enforceable restrictions for all sources for which emissions reductions were included in the modeling that demonstrated attainment.'' EPA's 2014 SO_2 Guidance addresses the need for enforceability of the limits necessary to provide for attainment. The Guidance states, ''An approvable attainment demonstration would . . . demonstrate that the emission limits in the plan will suffice to provide for timely attainment . . . In cases where the necessary emission limits have not previously been made a part of the SIP, or have not otherwise become federally enforceable, the plan needs to include the necessary enforceable limits in adopted form suitable for incorporation into the SIP.'' *See* 2014 SO_2 guidance, p. 9.

The most significant sources in and near the designated nonattainment areas are subject to new emission limits that Illinois adopted as part of its part 214 rules. In particular, all of the sources that needed to reduce emissions in order for the nonattainment areas to attain the standard or that needed a reduced allowable emission level in order for the areas to maintain attainment of the standard are subject to limits adopted as part of the rule. Thus, the sources that are most critical to the future success of the attainment plans (including all of the significant units at these sources) are subject to limitations adopted in Illinois' rule. Illinois did not submit already federally enforceable permits for incorporation into the SIP, even if the modeling showing future attainment accounted for such limits. However, as previously discussed, all of the emission reductions that Illinois identified as necessary to bring the Lemont and Pekin areas into attainment are mandated by emission limits in the rule. Those sources for which Illinois' modeled emissions were based on federally enforceable limits already established in permits rather than in the new rules are sources that are already required to meet emission levels that should, combined with the new rule limits, provide for attainment of the standard, so that no further emission reductions are necessary for these sources in order for the SIP to provide for NAAQS attainment.

EPA reviewed the basis of the existing emission limits for the most significant of those sources not needing to reduce emissions below existing levels. In general, for these sources, the limits that underlie the allowable emission levels that Illinois modeled were established in federally enforceable construction permits. In some cases, these permits were to authorize major modifications or major new sources, in accordance with requirements for prevention of significant deterioration (PSD). In other cases, notably for the refineries, Illinois issued these limits in federally enforceable form in accordance with a federal-state consent decree. For example, the limits on emissions from the primary emission sources at CITGO, originally established by consent decree, have been incorporated into PSD permit number 05070003. The limits established in such permits are federally enforceable. In accordance with EPA's guidance on the use of federally enforceable limits, EPA finds that these limits are an appropriate estimate of the maximum allowable emissions under the plans, and so EPA finds that these limits represent an appropriate basis for modeling to determine whether Illinois' nonattainment plan provides for attainment.

Illinois has requested EPA to approve revisions to emission limits for significant sources within the Pekin and Lemont areas in 35 Illinois Administrative Code part 214, as part of the SIP, and EPA proposes to approve these new emission limits because they, in combination with permit limits that are already federally enforceable, provide adequate enforceability of the necessary emission limits for the purposes of Illinois' nonattainment plans.

2. Longer Term Average Limits

As noted above, the 2014 SO_2 Guidance discusses the option to establish limits with averaging times up to 30 days in length that are comparably stringent to the 1-hour average limit that would otherwise have been set, and recommends a detailed procedure for determining such a comparably stringent limit. The Guidance also notes that it might be appropriate to establish supplemental limits in order to limit the magnitude and/or frequency of elevated emissions, as a means of further reducing the likelihood of elevated emissions occurring on those occasions when the meteorology is conducive to high concentrations of SO_2.

Based on the variability of emissions at Powerton, Illinois opted to set the emission limit for this facility on a 30-day average basis. Illinois closely followed the recommendations of the 2014 SO_2 Guidance in determining an appropriate level for this limit. As a first step, Illinois conducted modeling which determined that the 1-hour emission limit that would provide for attainment (the critical emissions value) would be 6,000 pounds of SO_2 per hour. That is, Illinois conducted a series of modeling runs identifying baseline allowable air quality (in absence of emission reductions), evaluating the air quality consequences of feasible emission reductions, and ultimately identifying a set of reduced allowable emission levels that would provide for attainment. In this attaining set of ''critical emission levels,'' the ''critical emission level'' for Powerton was 6,000 pounds per hour.

Illinois then used a database of hourly SO_2 emissions data from a source comparable with Powerton to determine the historical and expected future relationship between 1-hour and 30-day average actual emission levels of a source using the control technology that Powerton will employ. Illinois' submittal notes that Powerton (presumably for purposes of satisfying the Mercury and Air Toxics Standards) is expected to install ''a trona injection dry FGD system for the control of SO_2 emissions before 2017, so historical data from the units at the source would not be appropriate'' as a basis for determining the prospective relationship between 1-hour and 30-day average emissions once the control is installed. *See* Illinois submittal, Technical Support Document, page 9. ''As a substitute, [Illinois used] a data set consisting of 42 months of emissions data from the Potomac River Generating Station, located in Alexandria, Virginia, [which] are similar to the Powerton units, and were operated with trona injection systems during the time this data set was created.'' *Id.* Using this data set, Illinois determined the 99th percentile of the historical 1-hour values in this data set to be 1,107 pounds per hour and the 99th percentile of the historical 30-day average values calculated from this data set to be 637 pounds per hour. Illinois used the ratio between these two 99th percentile values (*i.e.,* approximately 58 percent) as an adjustment factor to multiply by the critical emissions value (the otherwise applicable 1-hour emission limit) of 6,000 pounds per hour to determine a comparably stringent 30-day average limit of 3,452 pounds per hour. This adjustment factor is quite similar to, and slightly more conservative (*i.e.,* it reflects a more stringent long term limit) than, the average adjustment factor discussed in EPA's 2014 SO_2 Guidance for facilities using dry scrubbers, an average adjustment factor of 63 percent. *See* appendix D of EPA's 2014 Guidance.

As noted above, EPA's 2014 SO_2 Guidance notes the benefit of supplementing long term average limits with additional limits to reduce the likelihood and/or the magnitude of emission levels above the 1-hour critical emission value. For this purpose, Illinois' rules supplement the 30-day average limit for Powerton with a requirement that emissions not exceed 6,000 pounds per hour more than 5 percent of the hours (as a 1-hour average) during any 30-day averaging period. By constraining the likelihood of elevated emissions, and thereby reducing the likelihood that elevated emissions will occur at times when meteorology is conducive to high SO_2 concentrations, this supplemental limit further strengthens the degree of confidence that Illinois' plan for the Pekin area should result in attainment.

Based on a review of the state's submittal, the 3,452 pounds per hour 30-day average limit for Powerton, supplemented with a limit on the percentage of time that Powerton may exceed the 6,000 pounds per hour critical emission value, provides a suitable alternative to establishing a 6,000 pounds per hour 1-hour average emission limit for this source. The state used a suitable database and then applied an appropriate adjustment, yielding an emission limit that has comparable stringency to the 1-hour average limit that the state determined would otherwise have been necessary to provide for attainment. While the 30-day average limit allows for occasions in which emissions are higher than the level that would be allowed under the 1-hour limit, the state's limit compensates by requiring average emissions to be lower than the level that would otherwise have been required by a 1-hour average limit. Further, the supplemental limit adopted by Illinois ensures that elevated emissions will be infrequent. Thus, the 30-day average limit of 3,452 pounds per hour as supplemented is comparably as stringent as a 1-hour limit of 6,000 pounds per hour. Furthermore, Illinois' modeling of 6,000 pounds per hour for Powerton is an appropriate means of assessing whether the 30-day average limit of 3,452 pounds per hour plus supplemental limit provides for attainment.

Based on EPA's review of this information, the 30-day average limit for Powerton, in combination with other limitations in the state's plan (most notably the limits summarized in Table 1 above), should provide for attainment.

E. Background Concentrations

Illinois used seasonally varying hourly background data. These values were taken from an SO_2 monitor in Oglesby, Illinois, which is located approximately half way between the two areas. There were 24 hourly values for each season, for a total of 96 monitored concentration values. Each of these values represents a three-year average (2011–2013) of the second highest hourly concentration for each season.[8] The values that Illinois determined range from 1.54 to 12.22 micrograms per cubic meter ($\mu g/m^3$). EPA has reviewed these background concentrations and finds these values appropriate as modeling inputs.

F. Review of Modeling Concerns Addressed by Illinois

During preparation of its nonattainment plans, Illinois received and responded to a number of comments by, among others, the Sierra Club and the Environmental Law and Policy Center that EPA believes warrant further review and explanation. Sierra Club noted that the nonattainment plans provide only a relatively small margin of attainment, and Sierra Club commented (among other comments)

[8] Since this 3-year period has 1,096 days, and the data set for each hour of the day is divided into four seasons of data sets, the data set for the determination of each of the 96-hour and season-specific background concentration includes a maximum of about 274 values. The selection of the second highest value is considered to provide an appropriate degree of conservatism in determining the background concentration for each hour and season. AERMOD then reports results that reflect the addition of the appropriate background value; for example, concentrations reported for an 8 a.m. hour in springtime reflect the sum of the source impacts for that hour plus the springtime 8 a.m. background concentration.

that in this context, various types of emissions that Illinois does not account for could result in these areas violating the standard. EPA has reviewed the comments that Sierra Club provided to Illinois and the response that Illinois provided in a document dated August 28, 2015. (These comments and responses were included in Illinois' SIP submittal and thus are available in the docket for this action).

First, Sierra Club expressed concerns about emissions from modeled sources that are not subject to Illinois Administrative Code section 214.603. Section 214.603 includes the following sources: Aventine Renewable Energy; Illinois Power Holdings E.D. Edwards; Ingredion Bedford Park; Midwest Generation Joliet; Midwest Generation Powerton; Midwest Generation Will County; Owens Corning; and Oxbow Midwest Calcining. Sierra Club commented that emissions from start-up, shutdown, and malfunction that represent noncompliance could lead to a violation of the NAAQS. Illinois responded that maximum allowable emissions for the sources were used, and that these allowable emissions are enforceable through emission limitations in other regulations or permit conditions. EPA agrees with Illinois' response, finding that while emissions above allowable levels may occasionally occur, excess emissions that are prohibited by applicable requirements (whether they are occurring during start-up, shutdown, or malfunctions or at other times) need not be considered in evaluating whether a plan provides for attainment. That is, if a plan requires emissions to be sufficiently low to achieve attainment, EPA considers the plan to satisfy the requirement to provide for attainment, and the possibility of noncompliance that causes violations is an enforcement concern and not an indication that the plan has failed to provide for attainment.

Second, Sierra Club expressed concern regarding emissions from minor sources. Sierra Club expressed particular concern about minor sources being authorized by ''permits by rule'' that exempt the sources from review of their impact on SO_2 air quality. In expressing this concern, Sierra Club did not identify any permits by rule that had been issued or that were under consideration, or levels of emissions that might arise from such authorizations that may cause concern about maintaining attainment of the standard. Furthermore, Sierra Club did not identify examples of source types that might be minor enough to be authorized by a permit by rule and yet significant enough to cause the potential for violations of the SO_2 standard. Illinois responded that no such ''permits by rule'' exist that exempt minor sources with SO_2 emissions from review of air quality impacts. Illinois further noted that, even in the hypothetical situation that such a permit by rule existed, new minor sources, and minor modifications at major sources, in general contribute very little to SO_2 ambient concentrations, but in any case that Illinois conducts additional modeling in cases where the potential for air quality problems exists. Illinois' minor source permitting program provides adequate protection against minor sources and minor modifications causing violations of the SO_2 standard.

Third, Sierra Club contended that while Illinois claims more than 99 percent emission reduction at many sources, presumably based on the requirement that Illinois has now adopted rules requiring industrial sources that burn diesel fuel or residual oil to burn ultra-low sulfur fuel, these requirements cannot achieve the 99 percent reduction at modeled sources that Illinois claimed. It appears that Illinois is claiming that the rules reduced allowable emissions by more than 99 percent, while Sierra Club is asserting that there will be no such percent reduction in actual emissions. Illinois responded that the relevant issue is whether the emission level required by the rules is an appropriate level consistent with attaining the standard, not the percent reduction in relation to prior actual or allowable emissions. That is, the percent reduction that results from Illinois' rules, and whether it is calculated on the basis of actual or allowable emissions, is not germane to the attainment demonstration, which is designed to demonstrate that allowable emissions are sufficiently low to provide for attainment. EPA agrees that, irrespective of the precise relationship between current and required future emissions, *i.e.,* irrespective of what emission reduction percentage the rule requires relative to current emission levels, the rules require emissions to be at levels that provide for attainment.

Fourth, Sierra Club expressed concern that the flares modeled by Illinois will have ''much higher'' emissions during routine operations, such as flaring off gases during start-up, shutdown, and malfunction events when compared to pilot emissions, and that Illinois did not model these higher emission rates. Illinois responded that the flares have limits on their allowable emissions (which apply at all times, including during the events of concern to the Sierra Club), and the flares were modeled at their maximum allowable emission rates. The most significant flares in the Lemont area are at the CITGO and Exxon-Mobil refineries; these flares were addressed in a consent decree,[9] with terms and conditions subsequently incorporated into federally enforceable state permits requiring compliance with new source performance standards. The most significant flare in the Pekin area, at Aventine, is subject to emission limits in the state rules submitted in Illinois' plan. As noted above, these emission limits are practically enforceable, and the approach taken by Illinois in modeling maximum allowable emission rates is consistent with EPA recommendations for attainment demonstration modeling. EPA agrees with Illinois' rationale and conclusions regarding Sierra Club's concerns about Illinois' modeling analysis.

Finally, Sierra Club expressed concern regarding the impacts of possible emission ''spikes'' at Powerton, *i.e.,* occasions with elevated emissions that would be permissible under the 3,452 pound per hour 30-day average emission limit applicable to the facility. Sierra Club in particular urged the adoption of supplemental limits to restrict the magnitude and frequency of these emission spikes. As described earlier, Illinois responded by adopting a supplemental limit requiring that no more than 5 percent of the hours in any 30-day averaging period may have emissions in excess of 6,000 pounds per hour, which is the modeled critical emissions value. EPA believes this supplemental limit appropriately addresses Sierra Club's concern.

G. Summary of Results

The final dispersion modeling results submitted by Illinois show design value concentrations of 190.9 and 196.2 $\mu g/m^3$ for the Lemont and Pekin nonattainment areas, respectively. Both of these design value concentrations are below 75 ppb, which corresponds to 196.4 $\mu g/m^3$, and therefore Illinois' modeling analysis demonstrates attainment of the 2010 SO_2 NAAQS for the Lemont and Pekin areas. EPA has reviewed Illinois' attainment demonstrations, agrees with Illinois' submitted results, and proposes to determine that Illinois' plans provide for attainment of the 2010 primary SO_2 NAAQS in the Lemont and Pekin nonattainment areas.

[9] For example, for CITGO, see Civil Action Number H–04–3883 entered January 26, 2005 in the Southern District of Texas.

IV. Review of Residual and Distillate Fuel Oil Sulfur Content Limits

In conjunction with its adoption of SO_2 emission limits for major sources, Illinois adopted rule revisions to limit the sulfur content of distillate and residual fuel oil combusted at stationary sources throughout the state. Consistent with trends toward increasing availability and use of lower sulfur oil of all kinds, these limits were intended to assure that the considerable number of generally smaller boilers that burn these fuels use fuels with relatively low sulfur content. The new limits adopted by Illinois will help protect air quality in the entire state, including the Lemont and Pekin nonattainment areas. As a result, EPA proposes to approve these rule amendments as part of the SIP.

On and after January 1, 2017, the sulfur content of residual fuel oil combusted at stationary sources will be limited to 1,000 parts per million (ppm), and sulfur content of distillate fuel oil will be limited to 15 ppm. These limits apply to facilities that exclusively burn liquid fuel. These limits were adopted as part of Title 35 of Illinois Administrative Code part 215 subparts B and D, in sections 214.121, 214.122, and 214.161. Section 214.121(b) sets these limits for large sources (sources with actual heat input greater than 73.2 megawatts (MW)), and section 214.122(b) sets these limits for small sources (sources with actual heat input smaller than, or equal to, 73.2 MW).

Section 214.161(c) and (d) set exceptions from the sulfur content limitations mentioned above for specific sources. Section 214.161(c) lists exceptions for Midwest Generation Joliet, Powerton, Waukegan, and Will County power stations or electric generating units (EGUs). These sources must comply with the following limitations: (1) From January 1, 2016 through December 31, 2018, the sulfur content of all distillate fuel oil purchased for use by the listed EGUs must not exceed 15 ppm; (2) from January 1, 2017 through December 31, 2018, the sulfur content of all distillate fuel oil used by the listed EGUs must not exceed 500 ppm; and (3) on and after January 1, 2019, the sulfur content of all distillate fuel oil used by the listed EGUs must not exceed 15 ppm. Section 214.161(d) sets an exception for Caterpillar Montgomery, and sets the following limit: On and after January 1, 2016, the sulfur content of all distillate fuel oil purchased for use by this source must not exceed 15 ppm, and the sulfur content of all distillate fuel oil used by this source must not exceed 500 ppm. These exemptions provide the listed sources with additional time to burn existing stocks of higher sulfur oils, but ultimately require these sources to meet the same sulfur content limits as apply to other sources in the state.

For the sources to which these alternate provisions apply that are in or near the Lemont or Pekin areas, the attainment modeling reflects the emissions that are allowable as of January 1, 2017, without regard to the tighter limits that apply two years thereafter. Thus, Illinois' modeling shows that these short term extensions of the deadline for complying with the generally applicable oil sulfur content limits do not prevent timely attainment. In addition, for the rest of the state, these limits strengthen the SIP and help improve air quality. For these reasons, EPA proposes to approve these rule amendments.

In the rulemaking adopting the above elements of its Part 214 rules, Illinois also adopted revisions to Part 225 and 217. However, Illinois' Lemont and Pekin nonattainment plans are not contingent on any of the provisions of these parts of Illinois administrative code, and these rules were not submitted as a part of this SIP revision request. Thus, EPA is taking no action with respect to those revisions as part of this action.

V. Review of Other Plan Requirements

A. Emissions Inventory

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to: (1) Estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area; and (2) assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures. As noted above, the state must develop and submit to EPA a comprehensive, accurate and current inventory of actual emissions from all sources of SO_2 emissions in each nonattainment area, as well as any sources located outside the nonattainment area which may affect attainment in the area. *See* CAA section 172(c)(3).

Illinois provided a comprehensive, accurate, and current inventory of emissions of SO_2 in and within 50 kilometers of the Lemont and Pekin areas. By addressing sources to this distance from the nonattainment areas, Illinois has developed a thorough list of the sources with any potential to cause impacts that warrant including in the areas' attainment modeling. Illinois' initial submittal provided inventories of allowable emissions, and then Illinois supplemented this information on May 4, 2017 with a submittal of inventories of actual emissions.

As noted above, these inventories addressed sources within 50 kilometers of the Lemont and Pekin nonattainment areas. These inventories addressed 425 sources in and near Lemont and 48 sources in and near Pekin. Once Illinois compiled its inventory of current allowable emissions, Illinois conducted modeling to determine the degree to which the applicable emission limitations allowed violations of the SO_2 air quality standard. Illinois then conducted a series of additional modeling runs to determine a set of emission limits that would provide for attainment. In accordance with EPA guidance, Illinois' attainment demonstration is based on modeling using allowable emissions to demonstrate that its plans provide for attainment. This reflects Illinois' intent to ensure that emissions are required to be sufficiently low as to achieve attainment, *i.e.,* that allowable emissions will not cause violations. Similarly, Illinois' plans are designed to meet the other part D requirements on the basis of allowable emissions, for example by setting allowable emissions at a level that satisfy applicable requirements for RACT/RACM and RFP. Illinois did not use actual emissions in this planning process. Accordingly, Illinois initially provided an inventory of allowable emissions, which served the needs of the pertinent nonattainment planning requirements. Then, in its May 4, 2017, submittal, Illinois also submitted a comprehensive, accurate, current inventory of actual emissions. Tables 1 and 2 summarize actual emissions in 2014 for a subset of these sources, namely those sources that have actual SO_2 emissions of at least 100 tons per year. Therefore, Illinois has met the emission inventory requirement of CAA section 172(c)(3) for the Pekin and Lemont areas.

TABLE 2—ACTUAL 2014 SO_2 EMISSIONS IN LEMONT AREA EXCEEDING 100 TONS PER YEAR

Source name	Actual SO_2 (tpy)
Midwest Generations—Joliet Station 29	12,800
Will County Generating Station	10,478
Ingredion Incorporated Argo Plant	1,671
Exxon Mobil Oil Corp	1,562
Koppers Inc	867
CITGO Petroleum Corp	346
Ardagh Glass Inc	145

TABLE 3—ACTUAL 2014 SO_2 EMISSIONS IN PEKIN AREA EXCEEDING 100 TONS PER YEAR

Source name	Actual SO_2 (tpy)
Midwest Generation LLC	16,717
Illinois Power Resources Generating LLC—Edwards Energy Ctr	8,278
Aventine Renewable Energy, Inc	7,292
Illinois Power Resources Generating LLC—Duck Creek Energy	240
Keystone Steel & Wire Co	129

B. RACM/RACT

Illinois's plan reflects a number of strategies to reduce emissions at various facilities. In the Lemont area, the Joliet power plant and Unit 3 of the Will County power plant will cease burning coal and will instead either burn natural gas or ultra-low sulfur diesel. In the Pekin area, substantial emission reductions will result from conversion of the Aventine facility switching from burning coal to burning natural gas and from implementation of emission control equipment at the E.D. Edwards and Powerton power plants. Both areas will also benefit from statewide requirements for boilers burning fuel oil to burn low sulfur fuel.

In its August 8, 2016, supplemental submittal, Illinois explained its rationale for concluding that the plans meet the RACM/RACT requirement in accordance with EPA guidance. Specifically, following EPA's interpretation that RACT and RACM reflect ''the level of emissions control that is necessary to provide for expeditious attainment of the NAAQS within a nonattainment area,'' Illinois noted that its nonattainment plans require permanent and enforceable control measures that provide for timely attainment. 35 Illinois Administrative Code section 214.603 lists the appropriate source-specific SO_2 emission limits by unit, in pounds per hour. Therefore, Illinois has satisfied the RACM/RACT requirements for the Lemont and Pekin areas.

C. NSR

EPA approved Illinois' nonattainment new source review rules on December 17, 1992 (57 FR 59928); September 27, 1995 (60 FR 49780) and May 13, 2003 (68 FR 25504). These rules provide for appropriate new source review for SO_2 sources undergoing construction or major modification in the Lemont and Pekin areas without need for modification of the approved rules. Although these rules predated promulgation of the 2010 SO_2 standards, these rules are written in a manner such that new sources within areas that become designated nonattainment for this new standard, such as the Lemont and Pekin areas, become subject to these nonattainment new source review requirements. Therefore, this requirement has been met for these areas.

D. RFP

In its August 8, 2016, supplemental submittal, Illinois explained its rationale for concluding that the plans met the requirement for RFP in accordance with EPA guidance. Specifically, Illinois's rationale is based on EPA guidance interpreting the RFP requirement being satisfied for SO_2 if the plan requires ''adherence to an ambitious compliance schedule'' that ''implement[s] appropriate control measures as expeditiously as practicable.'' Illinois noted that its nonattainment plans provide for attainment as expeditiously as practicable, *i.e.,* by January 1, 2017, and finds that the plans thereby satisfy the requirement for RFP. Therefore, Illinois has satisfied the RFP requirements for the Lemont and Pekin areas.

E. Contingency Measures

In its August 8, 2016, supplemental submittal, Illinois explained its rationale for concluding that the plans met the requirement for contingency measures in accordance with EPA guidance. Specifically, Illinois relies on EPA's guidance, noting the special circumstances that apply to SO_2 (as discussed above), and explaining on that basis why the contingency requirement in CAA section 172(c)(9) is met for SO_2 by having a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement of applicable emissions limitations. Illinois stated that it has such an enforcement program pursuant to Section 31 of the Illinois Environmental Protection Act, identifying violators and taking prompt, appropriate enforcement action, and concludes that Illinois' nonattainment plans satisfy contingency measure requirements. Therefore, Illinois has satisfied the contingency measure requirements for the Lemont and Pekin areas.

VI. EPA's Proposed Action

EPA is proposing to approve Illinois' submission as a SIP revision, which the state submitted to EPA on March 2, 2016, and supplemented on August 8, 2016, and May 4, 2017, for attaining the 2010 1-hour SO_2 NAAQS for the Lemont and Pekin SO_2 nonattainment areas.

These SO_2 nonattainment plans include Illinois' attainment demonstration for the Lemont and Pekin SO_2 nonattainment areas. These nonattainment plans also address requirements for emission inventories, RACT/RACM, RFP, and contingency measures. Illinois has previously addressed requirements regarding nonattainment area new source review. EPA has determined that Illinois' SO_2

nonattainment plans meet the applicable requirements of CAA sections 172, 191, and 192. EPA is taking public comments for thirty days following the publication of this proposed action in the **Federal Register**. EPA will take all comments into consideration in our final action.

VII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Illinois Administrative Code, Title 35, Subtitle B, Chapter I, Subchapter c, Part 214, Sections 214.121, 214.122, 214.161, 214.600, 214.601, 214.602, 214.603, 214.604, and 214.605, effective December 7, 2015. 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).

VIII. 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 proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

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

Dated: September 17, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017–21371 Filed 10–4–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0377; FRL–9968–89–Region 9]

Approval of Arizona Air Plan Revision; San Manuel, Arizona; Second 10-Year Sulfur Dioxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the second 10-year maintenance plan for the San Manuel area in Arizona for the 1971 National Ambient Air Quality Standards (NAAQS or ''standards'') for sulfur dioxide (SO_2).

DATES: Any comments on this proposal must arrive by November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0377 at *https://www.regulations.gov,* or via email to Ashley Graham, Air Planning Office at *graham.ashleyr@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.,* audio or video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically on the *www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Ashley Graham, EPA Region IX, (415) 972–3877, *graham.ashleyr@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the words ''we,'' ''us,'' or ''our'' mean the EPA.

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V. Statutory and Executive Order Reviews

I. Summary of Action

We are proposing to approve the second 10-year maintenance plan for the San Manuel, Arizona SO_2 maintenance area (''San Manuel maintenance area'').[1]

II. Background

A. What National Ambient Air Quality Standards are considered in today's rulemaking?

Sulfur dioxide (SO_2) is the pollutant that is the subject of this action. The NAAQS are health-based and welfare-based standards for certain ambient air pollutants. Sulfur dioxide is among the ambient air pollutants for which we have established a health-based standard. Sulfur dioxide causes adverse health effects by reducing lung function, increasing respiratory illness, altering the lung's defenses and aggravating existing cardiovascular disease. Children, the elderly, and people with asthma are the most vulnerable. Sulfur dioxide has a variety of additional impacts, including acidic deposition, damage to crops and vegetation, and corrosion of natural and man-made materials.

In 1971, the EPA established both short- and long-term primary NAAQS for SO_2. The short-term (24-hour) standard of 0.14 parts per million (ppm) was not to be exceeded more than once per year. The long-term standard specifies an annual arithmetic mean not to exceed 0.030 ppm.[2] *See* 40 CFR 50.4.

In 2010, the EPA revised the primary SO_2 NAAQS by establishing a new 1-hour standard of 75 parts per billion. The EPA revoked the existing 1971 primary standards at that time because they would not provide additional public health protection. *See* 75 FR 35520 (June 22, 2010). Today's action relates only to the revoked 1971 NAAQS. The State has requested that we act on this maintenance plan.[3]

B. What is a State implementation plan?

The Clean Air Act (CAA or ''Act'') requires states to attain and maintain ambient air quality equal to or better than the NAAQS. The state's commitments for attaining and maintaining the NAAQS are outlined in the state implementation plan (SIP) for that state. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. The Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date, or a contingency plan if the area fails to maintain the NAAQS once redesignated. The state must make the SIP available for public review and comment, must hold a public hearing or provide the public the opportunity to request a public hearing, and the SIP must be adopted by the state and submitted to us by the governor or her/his designee. The EPA acts on the SIP submittal, thus rendering the rules and regulations federally enforceable. The approved SIP serves as the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What is the background for this action?

1. When was the nonattainment area established?

The San Manuel maintenance area is located in southern Arizona. On March 3, 1978, for lack of a state recommendation, the EPA designated Pima and Pinal counties as a primary SO_2 nonattainment area based on monitored violations of the primary SO_2 NAAQS in the area between 1975 and 1977. *See* 43 FR 8962 (March 3, 1978). At the request of the Arizona Department of Environmental Quality (ADEQ), the nonattainment area was subsequently reduced to eleven townships in and around San Manuel. *See* 44 FR 21261 (April 10, 1979). Thus, townships T8S, R16E; T8S, R17E; T8S, R18E; T9S, R15E; T9S, R16E; T9S, R17E; T9S, R18E; T10S, R15E; T10S, R16E; T10S, R17E; and T11S, R16E made up the nonattainment area. Townships T10S, R18E; T11S, R17E; T12S, R16E; and T12S, R17E were classified as ''cannot be classified'' areas.

On the date of enactment of the 1990 CAA Amendments, SO_2 areas meeting the conditions of section 107(d) of the Act were designated nonattainment for the SO_2 NAAQS by operation of law. Section 107(d) describes the processes by which nonattainment areas are designated, including the pre-existing SO_2 nonattainment areas. Thus, the San Manuel area remained nonattainment for the primary SO_2 NAAQS following enactment of the 1990 CAA Amendments on November 15, 1990.

2. When was the San Manuel area redesignated for SO_2?

During its operation, the BHP Copper Incorporated (Inc.) copper smelter was the largest SO_2 point source in the San Manuel nonattainment area, contributing more than 99.5 percent of total SO_2 emissions. The smelter was shut down in 1999, and in January 2005, BHP Copper Inc. notified the ADEQ that the company intended to permanently cease operating the smelter. In March 2005, the ADEQ terminated the permit for the facility, and the smelter stacks were dismantled in January 2007. Closure of the smelter reduced emissions and resultant ambient SO_2 concentrations. On January 18, 2008, the EPA finalized approval of the maintenance plan and redesignation request for the San Manuel area, effective March 18, 2008 (*see* 73 FR 3396).

[1] For the definition of the San Manuel maintenance area, see 40 CFR 81.303. The San Manuel maintenance area is located in southern Arizona. The EPA designated Pima and Pinal counties as nonattainment for SO_2 on March 3, 1978, for lack of a state recommendation. On April 10, 1979, the EPA approved the State's request that the SO_2-affected portion of Pima and Pinal counties be limited to the townships surrounding the primary copper smelter located near San Manuel (44 FR 21261). Townships T8S, R16E; T8S, R17E; T8S, R18E; T9S, R15E; T9S, R16E; T9S, R17E; T9S, R18E; T10S, R15E; T10S, R16E; T10S, R17E; and T11S, R16E comprised the nonattainment area. Townships T10S, R18E; T11S, R17E; T12S, R16E; and T12S, R17E were designated as ''cannot be classified.''

[2] Secondary NAAQS are promulgated to protect public welfare. The secondary 1971 SO_2 NAAQS (3-hour) of 0.5 ppm is not to be exceeded more than once per year. The San Manuel area was not classified nonattainment for the secondary standard, and this action relates only to the primary 1971 SO_2 NAAQS.

[3] This action is consistent with the CAA's anti-backsliding provisions. The EPA's final rule on revocation of the 1971 SO_2 NAAQS discussed that maintenance SIPs would continue being implemented by states until they are subsumed by new planning and control requirements associated with the revised NAAQS. *See* 75 FR 35520, 35580 (June 22, 2010).

3. What is the current status of the area?

The remaining SO_2 point sources in the San Manuel maintenance area consist of the Oracle Compressor Station, the Bonito Quarry, Decorative Rock Sales, Saddlebrooke Ranch Water Reclamation Plant, and San Manuel schools, which have a combined Potential to Emit (PTE) of 4.54 tons per year (tpy) SO_2 (*see* Table 1).

TABLE 1—FACILITY-WIDE PTE FOR SOURCES OPERATING IN THE SAN MANUEL MAINTENANCE AREA

Facility	PTE (tpy SO_2)
Oracle Compressor Station ..	1.90
Bonito Quarry	0.80
Biosphere 2	0.71
Decorative Rock Sales	0.70
Saddlebrooke Ranch Water Reclamation Plant	0.40
San Manuel schools	0.03
Total	4.54

Currently, no ambient SO_2 monitors operate in the San Manuel area. However, we do not expect the cumulative impact of the sources in San Manuel to cause a violation of the NAAQS because the area's emissions are sufficiently low. Monitoring data collected between 1975 and 2007 indicate that the primary SO_2 NAAQS had not been violated since 1979, when the smelter was still in operation and emitted more than 200,000 tons of SO_2. No new sources of SO_2 of the magnitude of the BHP Copper Inc. smelter have located in the area since our redesignation of the area to attainment in 2008.

D. What are the applicable provisions for second 10-year maintenance plans for SO_2?

1. What are the statutory provisions?

Section 175A of the CAA provides the general framework for maintenance plans. The initial 10-year maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain contingency provisions necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation.

Section 175A(b) of the CAA requires states to submit a subsequent maintenance plan revision (second 10-year maintenance plan) eight years after redesignation. The Act requires only that this second 10-year maintenance plan maintain the applicable NAAQS for 10 years after the expiration of the first 10-year maintenance plan. Beyond these provisions, section 175A of the CAA does not define the content of a second 10-year maintenance plan.

2. What general EPA guidance applies to SO_2 maintenance plans?

The primary guidance on maintenance plans and redesignation requests is a September 4, 1992, memo from John Calcagni, titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni Memo''). Specific guidance on SO_2 redesignations also appears in a January 26, 1995, memo from Sally L. Shaver, titled ''Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas'' (''Shaver Memo'').

While the Calcagni Memo primarily addresses redesignations, we find it is appropriate to apply the Calcagni Memo to second 10-year maintenance plans for areas that were redesignated in accordance with the memo and continue to experience similar conditions to those at the time of redesignation. For areas to qualify for redesignation to attainment, this policy recommends that the maintenance plan address otherwise applicable provisions, and include:

(1) An attainment emissions inventory that identifies the level of emissions in the area that is sufficient to attain the NAAQS;

(2) a maintenance demonstration showing that future emissions of the pollutant or its precursors will not exceed the level of the attainment inventory, or modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS;

(3) provisions for continued operation of air quality monitors to provide verification of the attainment status of the area;

(4) verification that the state has the legal authority to implement and enforce all measures necessary to maintain the NAAQS and information on how the state will track the progress of the maintenance plan; and

(5) contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

III. The EPA's Evaluation of the Arizona State Submittal

A. Did the State meet the CAA procedural requirements?

On April 21, 2017, the ADEQ submitted to the EPA the ''San Manuel Sulfur Dioxide Maintenance Plan Renewal, 1971 Sulfur Dioxide National Ambient Air Quality Standards'' (''2017 San Manuel Second Maintenance Plan''). The State verified that it had adhered to its SIP adoption procedures in Appendix B to the 2017 San Manuel Second Maintenance Plan, which includes the notice of public hearing; the agenda for the April 20, 2017 public hearing; the sign-in sheet; the public hearing officer certification and transcript of the hearing; and the State's responsiveness summary.

The EPA reviewed the 2017 San Manuel Second Maintenance Plan for completeness and found the plan to be complete on September 14, 2017. See 40 CFR part 51, Appendix V, for the EPA's completeness criteria, which must be satisfied before formal review of the SIP.

B. Has the State met the substantive maintenance plan requirements?

1. Has the State met the requirements for second 10-year maintenance plans?

The 2017 San Manuel Second Maintenance Plan covers the second 10 years of the 20-year maintenance period, as required by Section 175A(b) of the CAA. As discussed below, the State has addressed the recommendations in the Calcagni Memo for emissions inventories, a maintenance demonstration, provisions for continued operation of air quality monitors, a commitment to track continued maintenance, and contingency provisions. We provide more details on each requirement and how the 2017 San Manuel Second Maintenance Plan meets each requirement in the following sections.

a. Attainment Emissions Inventory

On June 7, 2007, the ADEQ submitted to the EPA its ''Final Arizona State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area'' and its request for redesignation to attainment (''2007 San Manuel Maintenance Plan''). The State's June 2007 submittal also requested that the EPA withdraw the June 2002 ''Final San Manuel Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan.'' The June 2007 submittal updated the SIP to account for the closure of the dominant source of SO_2 emissions, the BHP Copper Inc. copper smelter.

The ADEQ's 2007 San Manuel Maintenance Plan included updated emissions inventories for sources in the San Manuel maintenance area for 1998, a year in which the smelter was operating and the area was attaining the SO_2 standards, and 2005, a year in which the smelter was closed and the area was attaining the SO_2 standards. In the 2017 San Manuel Second Maintenance Plan, the ADEQ relied on the 2005 emissions inventory to demonstrate NAAQS attainment, and included the 1998 emissions inventory to highlight the difference in area emissions during a year when the smelter was operating (1998) and a year when the smelter had been shut down (2005). In 1998, emissions in the San Manuel maintenance area were approximately 10,440 tons; in 2005, emissions were approximately 27.6 tons.

b. Maintenance Demonstration

The Calcagni Memo recommends that a state demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.

The 2017 San Manuel Second Maintenance Plan demonstrates continued maintenance of the 1971 primary SO_2 NAAQS, in part, by showing that future emissions of SO_2 will not exceed the level of the attainment inventory. The plan includes emissions inventories representing current emissions for 2014 for sources in the San Manuel maintenance area; projected emissions for two interim years during the second maintenance period (2019 and 2023); and projected emissions for the tenth year of the second maintenance period (2028).

The emissions inventories in the 2017 San Manuel Second Maintenance Plan (*see* Section 3 and technical support document in Appendix A) include estimates of SO_2 from all relevant source categories, which the plan divides among point, mobile (nonroad and on-road), and area (non-point) source categories. The ADEQ used Pinal County's point source database to identify point sources in the Pinal County portion of the maintenance area. The Pinal County portion of the San Manuel maintenance area contains six point sources (*i.e.,* Oracle Compressor Station, Bonito Quarry, Biosphere 2, Decorative Rock Sales, Saddlebrooke Ranch Water Reclamation Plant, and San Manuel schools), which together emitted 3.80 tons of SO_2 in 2014. The combined PTE of the point sources is 4.54 tpy SO_2. The 2017 San Manuel Second Maintenance Plan includes a description of current facility types, permitted emissions limits, and emissions calculation methods for Pinal County sources. There are no point sources in the Pima County portion of the maintenance area.

Mobile and area source emissions in the ADEQ's 2014 and subsequent year inventories were derived from the EPA's National Emissions Inventory Version 1 and the EPA's Motor Vehicle Emission Simulator model. In the 2014 base year, the ADEQ estimated that area sources contributed 2.58 tons of SO_2, the on-road mobile source sector contributed 1.41 tons of SO_2, and the non-road mobile source sector contributed 1.14 tons of SO_2 in the San Manuel maintenance area (*see* Table 2).[4] Future year SO_2 emissions for the on-road mobile source sector are projected to decline due to changes in vehicle emissions standards, whereas area source emissions are expected to increase due to projected population growth in the San Manuel maintenance area. The ADEQ projected that in 2028, area sources will contribute 3.49 tons of SO_2, on-road mobile sources will contribute 0.80 tons of SO_2, and non-road mobile sources will contribute 1.65 tons of SO_2 (*see* Table 2).

TABLE 2—SAN MANUEL MAINTENANCE AREA SO_2 EMISSIONS SUMMARY

	2005	2014	2019	2023	2028
Area	27	2.58	2.86	3.12	3.49
On-road Mobile		1.41	0.72	0.75	0.80
Non-road Mobile		1.14	1.30	1.45	1.65
Point	0.6	3.80	4.54	4.54	4.54
Total	27.6	8.92	9.43	9.86	10.48

Based on our review of the emissions inventories in the 2017 San Manuel Second Maintenance Plan, including the supporting information in Appendix A, we conclude that the inventories are complete and consistent with applicable CAA provisions and the Calcagni Memo.

As discussed above, no new sources of SO_2 that are similar in size to the BHP Copper Inc. copper smelter have located in the area since our redesignation of the area to attainment in 2008. The submittal shows that the current (2014) and maximum expected level of emissions in the San Manuel SO_2 maintenance area through the end of the maintenance period (2028) are projected to be well below both the 1998 and 2005 attainment inventories. In 2005, emissions were 27.6 tons of SO_2; 2014 emissions were 8.92 tons of SO_2; and 2028 emissions are projected to be 10.48 tons of SO_2.[5]

The Calcagni Memo also specifies that projected emissions should reflect permanent, enforceable measures. Emission reductions from source shutdowns are considered permanent and enforceable if the shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly. The ADEQ terminated the permit for the BHP Copper Inc. copper smelter in March 2005, and the smelter stacks were dismantled in January 2007. The smelting facility cannot reopen without submitting New Source Review (NSR) and Title V (Part 70) permit applications to the ADEQ. We therefore propose to conclude that the State has demonstrated that the 1971 SO_2 NAAQS

[4] During the EPA's review of the ADEQ's submittal, we identified several inconsistencies in the 2014 population and land area values reported. However, the inconsistencies have only a minor impact, or in some cases no impact, on the emissions estimates derived. In cases where discrepancies did have a minor impact on emissions estimates, the EPA found that they led to an overestimate in SO_2 emissions and thus do not alter the ADEQ's findings that emissions through 2028 are projected to be well below the 2005 attainment inventory emissions, and that emissions estimates demonstrate continued attainment of the 1971 SO_2 NAAQS in the San Manuel maintenance area. *See* memorandum dated June 21, 2017, from Ashley Graham, EPA Region 9, Air Planning Office, to docket EPA–R09–OAR–2017–0377, ''Technical note regarding emissions inventories in Arizona's San Manuel SO_2 2nd 10-year maintenance plan.''

[5] *See* footnote 4.

is adequately protected due to permanent and enforceable measures.

c. Air Quality Monitoring

The Calcagni Memo recommends that once an area has been redesignated from nonattainment to maintenance, the state should continue to operate the appropriate air quality monitoring network to allow for continued verification of the attainment status of the area. However, following five years of clean data, SO_2 monitors were removed from the San Manuel area in accordance with 40 CFR 58.14(c)(3). Monitoring data collected during 1997 through 1999, while the smelter was still operating, indicate that maximum ambient SO_2 concentrations were less than 55 percent of the 3-hour NAAQS, less than 59 percent of the 24-hour NAAQS, and less than 33 percent of the annual NAAQS. Closure of the smelter in 1999 reduced emissions and resultant ambient SO_2 concentrations. Monitoring data for 2002 through 2007 indicate that maximum ambient SO_2 concentrations were two percent of the 3-hour NAAQS, less than three percent of the 24-hour NAAQS, and less than seven percent of the annual NAAQS.

The ADEQ does not anticipate a substantial increase in point source emissions in future years and commits to resume monitoring before any major source of SO_2 commences to operate in the San Manuel maintenance area. *See* 2017 San Manuel Second Maintenance Plan, p. 41. Since there are no remaining sources of SO_2 emissions of the magnitude of BHP Copper Inc., the projected future emissions through 2028 are sufficiently low relative to emissions during the 1998 and 2005 attainment years, and we do not anticipate any reason the 1971 SO_2 NAAQS would be violated, we conclude that future monitoring per the recommendations in the Calcagni Memo is not required and that the State's commitment to resume monitoring before any major source of SO_2 commences to operate in the San Manuel area satisfactorily addresses the CAA provisions.

d. Verification of Continued Attainment

The Calcagni Memo recommends that states ensure that they have the legal authority to implement and enforce all measures necessary to maintain the NAAQS, and that they specify how they will track progress of the maintenance plan in their submittal. One option for tracking maintenance would be through periodic updates to the emissions inventory.

The 2017 San Manuel Second Maintenance Plan submittal notes that the ADEQ, the Pima County Department of Environmental Quality (PDEQ), and the Pinal County Air Quality Control District (PCAQCD) have permitting and planning jurisdiction in the San Manuel SO_2 maintenance area and general authority to implement and enforce all measures to maintain the 1971 SO_2 NAAQS per Arizona Revised Statutes (A.R.S.) §§ 49–104, 49–404, 49–422, and 49–424.

In the 2017 San Manuel Second Maintenance Plan, the State commits to track maintenance of the SO_2 NAAQS in the San Manuel area through updates to the annual statewide emissions inventory and review of permit applications for SO_2 sources. *See* 2017 San Manuel Second Maintenance Plan, p. 42. Permitted sources are subject to monitoring, reporting, and certification procedures contained in Arizona Administrative Code (A.A.C) R18–2–306 and R18–2–309. The ADEQ has authority to monitor and ensure compliance with all applicable rules and permit conditions for sources in its jurisdiction, pursuant to A.R.S. § 49–101. The PCAQCD and the PDEQ have authority for sources under their jurisdiction under A.R.S. § 49–402. We find that the State's continued commitment to track maintenance of the SO_2 NAAQS through updates to the emissions inventory and the State's prevention of significant deterioration (PSD) permitting programs are sufficient to assure that the San Manuel area will maintain the NAAQS.

e. Contingency Plan

Section 175A(d) of the CAA requires that maintenance plans contain contingency provisions deemed necessary by the Administrator to assure that the state will promptly correct any violation of the standard that occurs after the redesignation of the area as an attainment area. The Calcagni Memo provides additional guidance, noting that although a state is not required to have fully-adopted contingency measures that will take effect without further action by the state for the maintenance plan to be approved, the maintenance plan should ensure that the contingency measures are adopted expediently once they are triggered. Specifically, the maintenance plan should clearly identify the measures to be adopted, include a schedule and procedure for adoption and implementation of the measures, and contain a specific time limit for action by the state. In addition, the state should identify specific indicators or triggers, that will be used to determine when the contingency measures need to be implemented.

Since there are no remaining sources of SO_2 emissions of the magnitude of the BHP Copper Inc. copper smelter, the primary cause of any future violations of the 1971 SO_2 NAAQS in the San Manuel area would be from new or modified point sources. The ADEQ and the PDEQ have PSD permitting programs (*i.e.,* A.A.C. R18–2–406 and Pima County Code 17.16.590) that were established to preserve the air quality in areas where ambient standards have been met. The PCAQCD's PSD program is under the ADEQ's jurisdiction. The ADEQ has jurisdiction over all refineries, copper smelters, coal-fired power plants, cement plants, and portable sources that will operate in multiple counties (*see* A.R.S. 49–402). These sources must obtain permits from the ADEQ. The State's updated PSD program was approved into the SIP on November 2, 2015 (80 FR 67319). Although the PDEQ's PSD program is not SIP-approved, the federal PSD permitting program at 40 CFR 52.21 was delegated to the PDEQ effective April 14, 1994. The PSD programs apply to any major source or major modification in the San Manuel area. Should a new facility be constructed in the San Manuel area or an existing facility want to upgrade or increase SO_2 emissions, the facility would be subject to PSD as recommended in the Calcagni Memo.

Furthermore, the ADEQ anticipates no relaxation of any implemented control measures used to attain and maintain the NAAQS, and commits to submit to us any changes to rules or emission limits applicable to SO_2 sources, as well as committing to maintain the necessary resources to promptly correct any violations of the provisions contained in the 2017 San Manuel Second Maintenance Plan.

Upon review of the contingency plan summarized above, we find that the ADEQ has established a contingency plan for the San Manuel area that satisfies the requirements of CAA section 175A(d) and the Calcagni Memo.

2. Other CAA Requirements

a. Transportation and General Conformity

As discussed above, section 175A of the CAA sets forth the statutory requirements for maintenance plans, and the Calcagni and Shaver memos cited above contain specific EPA guidance. Additional maintenance plan elements not covered by the Calcagni Memo are the transportation and general conformity provisions.

Conformity is required under section 176(c) of the CAA to ensure that federal actions are consistent with (''conform

to'') the purpose of the SIP. Conformity to the purpose of the SIP means that federal activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment and to maintenance areas. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity''), as well as to other federally supported or funded projects (''general conformity'').

Transportation conformity applies to projects that require Federal Highway Administration or Federal Transit Administration funding. 40 CFR part 93 describes the requirements for federal actions related to transportation plans, programs, and projects to conform to the purposes of the SIP. Because the EPA does not consider SO_2 a transportation-related criteria pollutant,[6] only the requirements related to general conformity apply to the San Manuel area.

Section 176(c)(4) of the CAA establishes the framework for general conformity. Besides ensuring that federal actions not covered by the transportation conformity rule will not interfere with the SIP, the general conformity regulations encourage consultation between the federal agency and the state or local air pollution control agencies before and during the environmental review process; public notification of and access to federal agency conformity determinations; and air quality review of individual federal actions.

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that federally supported or funded projects in nonattainment and maintenance areas ''conform'' to the air quality planning goals in the applicable SIP. SIP revisions intended to meet the conformity requirements in section 176(c) are referred to as ''conformity SIPs.'' In 2005, Congress amended section 176(c). Under the amended conformity provisions, states are no longer required to submit conformity SIPs for general conformity, and the conformity SIP requirements for transportation conformity have been reduced to include only those relating to consultation, enforcement, and enforceability. *See* CAA section 176(c)(4)(E).

The EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d)(3)(E)(v) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F. 3d 426 (6th Cir. 2001). Because the San Manuel area has already been redesignated for this standard, we believe it is reasonable to apply the interpretation of conformity SIP requirements as not applying for the purposes of redesignation to the approval of the second 10-year maintenance plan.

Criteria for making determinations and provisions for general conformity are contained in A.A.C. R18–2–1438. Arizona has an approved general conformity SIP.[7]

The ADEQ commits in the 2017 San Manuel Second Maintenance Plan to review and comment, as appropriate, on any federal agency draft general conformity determination it receives consistent with 40 CFR 93.155 for any federal plans or actions in this planning area, although none are currently planned for the area. *See* 2017 San Manuel Second Maintenance Plan, p. 18.

IV. Proposed Action and Request for Public Comment

We propose to approve the second 10-year SO_2 maintenance plan for the San Manuel area in Arizona under sections 110 and 175A of the CAA. As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted SIP because we believe it fulfills all relevant requirements.

We will accept comments from the public on this proposal for 30 days from the date of publication of this notice, and we will consider any relevant comments in taking final action on today's proposal.

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. *See* 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 26, 2017.

Alexis Strauss,

Acting Regional Administrator, EPA Region IX.

[FR Doc. 2017–21378 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

[6] *See* 40 CFR 93.102(b)(1).

[7] *See* 64 FR 19916 (April 23, 1999).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0832; FRL–9968–21–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology for Volatile Organic Compound Emissions in the Dallas-Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or ACT), the Environmental Protection Agency (EPA) is proposing approval of revisions to the State Implementation Plan (SIP) submitted by the State of Texas through the Texas Commission on Environmental Quality (TCEQ) on July 10, 2015. The Texas SIP submission revises rules for control of volatile organic compounds (VOC) to assist the Dallas-Fort Worth (DFW) moderate nonattainment area (NAA) in attaining the 2008 eight-hour ozone (O_3) National Ambient Air Quality Standards (NAAQS). The submission includes Wise County, a county added as part of the 2008 ozone moderate NAA area. We are proposing to approve the submitted rules as part of the DFW 2008 ozone SIP and as meeting Reasonably Available Control Technology (RACT). We are also proposing to approve negative declarations for certain source categories subject to RACT in the DFW moderate NAA.

DATES: Written comments must be received on or before November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2015–0832, at *http://www.regulations.gov* or via email to *todd.robert@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system).

For additional submission methods, please contact Mr. Robert M. Todd, (214) 665–2156, *todd.robert@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, (214) 665–2156, *todd.robert@epa.gov.* To inspect the hard copy materials, please contact Mr. Todd or Mr. Bill Deese (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means the EPA.

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I. Background on DFW 2008 Eight-Hour O_3 NAA Designation and Classification

On March 27, 2008, the EPA revised the primary and secondary O_3 standard to a level of 75 parts per billion (ppb). Promulgation of a NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the NAAs at the time of designation.

On May 21, 2012, the EPA established initial area designations for most areas of the country with respect to the 2008 primary and secondary eight-hour O_3 NAAQS. The EPA published two rules addressing final implementation [1] and air quality designations.[2] The implementation rule established classifications, associated attainment deadlines, and revoked the 1997 O_3 standards for transportation conformity purposes. The designation rule finalized the NAA boundaries for areas that did not meet the 75 ppb standard. Furthermore, the finalized boundaries were classified according to the severity of their O_3 air quality problems as determined by each area's design value.[3] The O_3 classification categories were defined as Marginal, Moderate, Serious, Severe, or Extreme.

Effective July 20, 2012, the DFW 2008 eight-hour O_3 NAA was classified as moderate, consisting of ten counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise County. With the exception of Wise County, all of these counties were designated as nonattainment with a serious classification under the 1997 O_3 standard. Although the DFW NAA was most recently classified as moderate, the first nine counties are still required to meet their more stringent serious classification requirements previously designated under the 1997 O_3 standard. Wise County, however, is required to meet the moderate classification requirements since it is newly designated as nonattainment for the DFW area.[4] Previously, Wise County was classified as an attainment area and was exempt from the O_3 NAA requirements under the 1997 eight-hour O_3 standard.

States are required to adopt control measures that implement Reasonably Available Control Technology (RACT) on major sources of VOC emissions. The major source emission threshold level for the first nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) remains at a potential to emit (PTE) of 50 tons per year (tpy) VOC based on its serious classification under the 1997 standard. The major source threshold in Wise County is 100 tpy VOC based on the moderate classification requirement.

[1] See 77 FR 30160 ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes.''

[2] See 77 FR 30088, ''Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards.''

[3] The air quality design value for the 8-hour ozone NAAQS is the three-year average of the annual fourth highest daily maximum eight-hour average ozone concentration. See 40 CFR part 50, appendix I.

[4] In pursuant to the United States Court of Appeals for the District of Columbia Circuit ruling in favor of the EPA's inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area as lawful (see USCA Case #12–1309).

II. Background on Chapter 115 Proposed Rule Revisions

On July 10, 2015 the EPA received the TCEQ's submitted rule revisions to 30 TAC, Chapter 115 ''Control of Air Pollution from Volatile Organic Compounds.'' The State revised Chapter 115 for all major sources of VOC in the 2008 DFW O_3 NAA for the implementation of RACT requirements in all counties as required by CAA, section 172(c)(1) and section 182(f). The state previously adopted Chapter 115 VOC rules for sources in the DFW area as part of the SIP submitted on May 30, 2007, for the 1997 eight-hour O_3 standard. The EPA approved those rules on January 14, 2009.[5] The scope of the Chapter 115 rule revisions implement the following: [6]

- Add VOC emission limits and control requirements to major sources in newly designated Wise County.
- Amend VOC emissions control requirements in the DFW NAA;
- Amend testing, monitoring and recordkeeping requirements for VOC sources in the DFW NAA;
- Amend exemptions from VOC control requirements in the DFW NAA;
- Amend compliance schedules for affected sources in the DFW NAA, including adding new compliance date of January, 2017 for newly affected sources in Wise County;
- Add definitions to reflect the change in attainment status of Wise County;

A complete summary along with all non-substantive changes pertaining to reformatting, restructuring, reorganizing, and administrative revisions will be referenced in the Technical Support Document (TSD), ''2008 8-Hour Ozone Nonattainment Area VOC SIP Demonstration and Reasonably Available Control Technology for Volatile Organic Compounds Sources in the Dallas-Fort Worth 2008 8-Hour Ozone Nonattainment Area'' a copy of which is posted in the docket of this proposal.

Table 1 contains a list of the new sections of Chapter 115 with adopted subchapters, divisions, and key sections associated with the July 10, 2015 DFW 2008 eight-hour O_3 SIP submittal.

TABLE 1—PROPOSED NEW SECTIONS OF 30 TAC CHAPTER 115 TO BE ADDED TO THE TEXAS SIP

Description	Section
Description and Sections of 30 TAC Chapter 115 Proposed New Section	
Subchapter E: Division 1	§§ 115.410, 115.411.

Table 2 contains a list of the sections of Chapter 115 with adopted subchapters, divisions, and key sections with modifications associated with the July 10, 2015 DFW 2008 eight-hour O_3 SIP submittal.

TABLE 2—PROPOSED AMENDED SECTIONS OF 30 TAC CHAPTER 115 IN THE TEXAS SIP

Description	Section
Description and Sections of 30 TAC Chapter 115 Proposed Modified Sections	
Subchapter A: Definitions	§ 115.10.
Subchapter B: Division 1	§§ 115.110–115.112, 115.114, 115.115, 115.117–115.119.
Subchapter B: Division 2	§§ 115.121, 115.122. 115.125–115.127, 115.129.
Subchapter B: Division 3	§ 115.139.
Subchapter C: Division 1	§ 115.215, § 115.219.
Subchapter C: Division 2	§ 115.229.
Subchapter C: Division 3	§ 115.239.
Subchapter D: Division 3	§ 115.359.
Subchapter E: Division 1	§§ 115.415, 115.416, 115.419.
Subchapter E: Division 2	§§ 115.420–115.423, 115.425–115.427, 115.429.
Subchapter E: Division 4	§§ 115.440–115.442, 115.446, 115.449.
Subchapter E: Division 5	§§ 115.450, 115.451, 115.453, 115.459.
Subchapter E: Division 6	§§ 115.460, 115.461, 115.469.
Subchapter E: Division 7	§§ 115.471, 115.473, 115.479.
Subchapter F: Division 1	§ 115.519.

Table 3 contains a section of Chapter 115 proposed for repeal from the SIP by the TCEQ, along with the relevant identifying subchapter and division.

TABLE 3—PROPOSED SECTIONS OF 30 TAC CHAPTER 115 TO BE DELETED FROM THE TEXAS SIP

Description	Section
Description and Sections of 30 TAC Chapter 115 Proposed Repealed Section	
Subchapter E: Division 1	§ 115.417 [7]

III. Evaluation of Texas' Proposed Chapter 115 VOC Control SIP

Previous Chapter 115 modifications addressed TCEQ's plan to comply with the 1997 eight-hour O_3 attainment standard and RACT requirements for 9 counties in the DFW area and were approved into the state's SIP on January 14, 2009 (74 FR 1903). We are not proposing to alter that determination. As described above, the DFW NAA for the 2008 O_3 standard now includes Wise County along with the other 9 counties in the area.

In today's action, we are proposing to approve revisions for TCEQ rule changes as part of the DFW moderate NAA area that would extend these same control requirements to sources in Wise County. The TCEQ provided information addressing the applicability of Chapter 115, Control of Air Pollution from Volatile Organic Compounds Regulations to sources with emissions equal to or greater than 100 tpy of VOCs in Wise County.

[5] See 74 FR 1903.

[6] This is not an exhaustive list of changes to the 30 TAC Chapter 115 rules. For a complete summary of all Chapter 115 sections associated with this SIP revision, please refer to the Technical Support Document (TSD), a copy of which is posted in the docket of this proposal.

[7] The content of § 115.417 detailed exemptions to Chapter 115 requirements. These exemptions were moved to the new § 115.411. This action reorders existing, approvable exemptions and does not alter the expected VOC control levels in the DFW NAA.

A complete evaluation of the TCEQ rules changes can be found in the TSD to this proposal that is included in the official docket. The changes TCEQ made includes ministerial changes as well as substantive ones such as the addition of control requirements that apply to sources in Wise County.

IV. Reasonably Achievable Control Technology in the DFW NAA

As noted above, the TCEQ's July 12, 2015, submission included a RACT demonstration that VOC control measures in 30 TAC Chapter 115 applied to major sources in the DFW moderate NNA, including Wise County. The TCEQ also provided information addressing the applicability of Control Technology Guidelines (CTG) and Alternative Control Technology (ACT) documents for VOC sources with emissions equal to or greater than 100 tpy of VOCs in Wise County. The TCEQ also provided negative declaration information for certain of these source categories in Wise County. Furthermore, the TCEQ demonstrated that any major source in the DFW NNA not covered by a CTG or ACT is controlled and meets RACT and that the negative declarations provided by the TCEQ and addressed in detail in the TSD to this proposal, are approvable.

The requirements for RACT are included in 182(b)(2) of the Act and further explained in our ''SIP Requirements Rule'' of March 6, 2015 (80 FR 12279), which explains States should refer to existing CTGs and ACT documents as well as all relevant technical information including recent technical information received during the public comment period to determine if RACT is being applied. States may conclude, in some cases, that sources already addressed by RACT determinations to meet the 1-Hour and/or the 1997 8-Hour O_3 NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. See 40 CFR 51.1112. The EPA has previously found that Texas VOC rules meet RACT for the 1-Hour and the 1997 8-Hour standards. See 74 FR 1903, January 14, 2009 and 80 FR 16291, March 27, 2015.

We have reviewed the emission limitations and control requirements detailed in 30 TAC Chapter 115 and compared them against EPA's CTG documents and guidelines. Based on our review and evaluation, we found the emission limitations and control requirements in 30 TAC Chapter 115 apply to the source categories covered by our guidance and CTG documents, and that the corresponding sections in 30 TAC Chapter 115 provide for the lowest emission limitation through application of control techniques that are reasonably available considering technological and economic feasibility. Also, the TCEQ demonstrated that any major source in the DFW NNA not covered by a CTG or ACT is controlled and meets RACT.

Based on the above evaluation, we are proposing to determine that the applicable emission limitations and control requirements in 30 TAC Chapter 115 represent RACT under the 2008 8-Hour ozone NAAQS.

A complete evaluation of how the TCEQ rules meet the requirements of the EPAs CTGs, ACTs and RACT requirements can be found in the TSD to this proposal that is included in the official docket. In particular, see pages 13–21 of the TSD.

V. The EPA's Proposed Action

The EPA is proposing to approve the submitted TAC Chapter 115 SIP revisions into the SIP because these revisions will assist the DFW area reach attainment under the 2008 8-Hour O_3 NAAQS by reducing VOC emissions for affected sources in the DFW area. The EPA is proposing to approve all revisions for the amended, repealed, and new sections of Chapter 115 that are being submitted for inclusion into the SIP. The EPA is also making a determination that the TCEQ rules included in these revisions will meet the RACT requirements of the CAA § 182(b) for the 2008 O_3 NAAQS. We are also making a determination that the negative declarations provided by the TCEQ are approvable.

VI. Incorporation by Reference

In this action, the EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

VII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011) and 13771 (82 FR 9339, February 2, 2017);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: September 29, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017–21491 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2017–0485; FRL 9968–77–Region 7]

Approval of Nebraska's Air Quality Implementation Plan, Operating Permits Program, and 112(l) Program; Revision to Nebraska Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP), Operating Permits Program, and 112(l) program submitted on July 14, 2014, by the State of Nebraska. This action amends the SIP to revise two chapters, ''Definitions'' and ''Operating Permit Modifications; Reopening for Cause''. Specifically, these revisions incorporate by reference the list of organic compounds exempt from the definition of volatile organic compound (VOC) found in the Code of Federal Regulations; notification requirements for the operating permit program are being amended to be consistent with the Federal operating permit program requirements; the definition of ''solid waste'' is being revised by the state, however, because the state's definition is inconsistent with the Federal definition, EPA is not approving this definition into the SIP. Finally, the state is extending the process of ''off-permit changes'' to Class I operating permits. Additional grammatical and editorial changes are being made in this revision. Approval of these revisions will not impact air quality, ensures consistency between the State and Federally-approved rules, and ensures Federal enforceability of the State's rules. In the ''Rules and Regulations'' section of this **Federal Register**, we are approving these two chapters as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received by November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0485, to *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7391, or by email at *crable.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: Nebraska's July 14, 2014, submittal included revisions to Chapters 1, 4, 15, 18, 20, 28 and 34 of title 129. In previous direct final actions, EPA approved revisions to chapter 4 ''Ambient Air Quality Standards'' on October 11, 2016 (81 FR 70023), and chapter 34 ''Emission Sources; Testing; Monitoring'' on October 7, 2016 (81 FR 69693).

This document proposes to take action on chapter 1, ''Definitions'', and chapter 15, ''Operating Permit Modifications; Reopening for Cause''. Revisions to chapter 1 ''Definitions'' involve various grammatical and numerical edits. In addition, section 160 of chapter 1 contains a definition of VOC that provides exceptions to the definition based upon a list of organic compounds, which have been determined to have negligible photochemical reactivity. The revision removes the list of VOC exceptions at section 160, and instead references the list in the Code of Federal Regulations. Revisions to title 129, chapter 1, section 139 change the notification requirements for ''Section 502(b)(10) changes'' making it consistent with the Federal operating permit program. And finally, Nebraska's requested revisions to the chapter 1 definition of ''solid waste'' are inconsistent with the Federal definition. For that reason, EPA is not approving the State's revised ''solid waste'' definition into the SIP.

The proposed part 70 revision to chapter 15 extends ''off-permit changes'', to Class I and II operating permits as allowed under the Federal program. Additional changes ensure that chapter 15 conforms to the applicable Federal regulations, including updating section 007, which allows changes in a permitted facility without a permit revision if certain criteria is met. Finally, revisions to chapter 15 shorten notice periods under certain circumstances when changing Class I and II operating permits, and are making various grammatical revisions for clarity purposes.

Chapter 18 is not a part of the State's approved SIP, and will be addressed through a separate future rulemaking process under the CAA section 111(d). EPA has elected to address changes to chapter 20 with a future SIP revision. Chapter 28 is not a part of the State's approved SIP and therefore, no action is required by the EPA.

We have published a direct final rule approving the State's SIP revision(s) in the ''Rules and Regulations'' section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental

relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 25, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

[FR Doc. 2017–21391 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R09–RCRA–2017–0523; FRL–9968–85–Region 9]

Arizona: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Arizona has applied to the EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes correspond to certain federal rules promulgated between May 26, 1998 and July 28, 2006 (also known as RCRA Cluster VIII (checklist 167D) and Clusters IX through XVII). EPA has reviewed Arizona's application with regards to federal requirements and is proposing to authorize the state's changes.

DATES: Comments on this proposed rule be received by November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–RCRA–2017–0523 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*. You may also view Arizona's application by contacting the Arizona Department of Environmental Quality Records Center at 602–771–4380, Monday through Friday: 8:30 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Laurie Amaro, U.S. Environmental Protection Agency, Region 9, Land Division, 75 Hawthorne Street (LND–1–1), San Francisco, CA 94105, phone number: 415–972–3364, email: *amaro.laurie@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions has EPA made in this rule?

EPA concludes that Arizona's application to revise its authorized program meets all statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Arizona final authorization to operate as part of its hazardous waste program the changes listed below in Section F of this document, as further described in the authorization application.

Arizona has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA).

C. What is the effect of today's authorization decision?

The effect of this decision is that the changes described in Arizona's authorization application will become part of the authorized state hazardous waste program, and therefore will be federally enforceable. Arizona will continue to have primary enforcement authority and responsibility for its state hazardous waste program. EPA retains its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized state program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the state has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Arizona is being authorized by today's action are already effective, and are not changed by today's action.

D. What happens if EPA receives comments that oppose this proposed action?

EPA will consider all comments received during the comment period and address all such comments in a final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. For what has Arizona previously been authorized?

Arizona initially received final authorization on November 20, 1985 to implement its base hazardous waste management program. Arizona received authorization for revisions to its program on August 6, 1991 (56 FR 37290 effective October 7, 1991), July 13, 1992 (57 FR 30905 effective September 11, 1992), November 23, 1992 (57 FR 54932 effective January 22, 1993), October 27, 1993 (58 FR 57745 effective December 27, 1993), July18, 1995 (60 FR 36731 effective June 12, 1995), March 7, 1997 (62 FR 10464 effective May 6, 1997), October 28, 1998 (63 FR 57605–57608 effective December 28, 1998), and March 17, 2004 (69 FR 12544 effective March 17, 2004), originally published on October 27, 2000 (65 FR 64369).

F. What changes is EPA authorizing with today's action?

Arizona submitted a final complete program revision application to EPA dated July 14, 2017 seeking authorization of changes to its hazardous waste program that correspond to certain federal rules promulgated between May 26, 1998 and July 28, 2006 (also known as RCRA Cluster VIII (Checklist 167D only) and

Clusters IX (Checklists 169 and 173–180) and Clusters X through XVII). EPA proposes to determine, subject to receipt of written comments that oppose this action, that Arizona's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all the requirements necessary to qualify for final authorization.

Accordingly, EPA proposes to grant Arizona final authorization for the following program changes:

Program Revision Changes for Federal Rules

Arizona adopts by reference the federal RCRA regulations in effect January 29, 2007, at Arizona Administrative Code (AAC) Title 18, Chapter 8, Article 2 (AAC R18–8–260 through 280 effective September 30, 2016). The federal requirements for which the State is being authorized are listed in the table below noting the Arizona Administrative Register (AAR) volume and page and the AAC implementing rule sections. An asterisks (*) after a checklist number indicates a rule which is optional for state adoption.

STATE ANALOGUES TO THE FEDERAL PROGRAM

Description of Federal requirement and checklist No. (* indicates optional)	**Federal Register** volume, page and date	Analogous Arizona Register (volume/page) and administrative code
Mineral Processing Secondary Materials Exclusion Rule. (Checklist 167 D *).	63 FR 28556, May 26, 1998 ...	6 AAR 3093, AAC R18–8–261(A), R18–8–268, July 24, 2000.
Petroleum Refining Process Wastes Rule. (Checklist 169)	63 FR 42110, August 6, 1998	6 AAR 3093, AAC R18–8–261, 266, 268, July 24, 2000.
Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction Rule (K088). (Checklist 173).	63 FR 51254, September 24, 1998.	6 AAR 3093, AAC R18–8–268, July 24, 2000.
Post-Closure Permit Requirement and Closure Process Rule. (Checklist 174 *).	63 FR 56710, October 22, 1998.	6 AAR 3093, AAC R18–8–264, 265, 270, July 24, 2000.
HWIR-Media Rule. (Checklist 175 *)	63 FR 65874, November 30, 1998.	6 AAR 3093, AAC R18–8–260, 261, 264, 265, 268, 270(A), (T) and (U), July 24, 2000.
Universal Waste Rule—Technical Amendments. (Checklist 176 *).	63 FR 71225, December 24, 1998.	6 AAR 3093, AAC R18–8–266, 273, July 24, 2000.
Organic Air Emission Standards: Clarification and Technical Amendments Rule. (Checklist 177).	64 FR 3381, January 21, 1999	6 AAR 3093, AAC R18–8–262, 264, 265, July 24, 2000.
Petroleum Refining Process Wastes—Leachate Exemption Rule. (Checklist 178 *).	64 FR 6806, February 11, 1999.	6 AAR 3093, AAC R18–8–261, July 24, 2000.
Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, and Treatment Standards for Metal Wastes, and Zinc Micronutrient Fertilizers, and Carbamate Treatment Standards, and K088 Treatment Standards Rule. (Checklist 179).	64 FR 25408, May 11, 1999 ...	6 AAR 3093, AAC R18–8–261, 262, 268, July 24, 2000.
Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Rule. (Checklist 180).	64 FR 26315, May 14, 1999 ...	6 AAR 3093, AAC R18–8–260, July 24, 2000.
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps Rule. (Checklist 181).	64 FR 36466, July 6, 1999	9 AAR 816, AAC R18–8–260, 261, 264, 265, 268, 270, and 273, April 15, 2003.
Hazardous Air Pollutant Standards for Hazardous Waste Combustors Rule. (Checklist 182).	64 FR 52828, September 30, 1999.	9 AAR 816, AAC R18–8–260, 261, 264, 265, 266, and 270, April 15, 2003.
Hazardous Air Pollutant Standards for Hazardous Waste Combustors, Technical Correction Rule. (Checklist 182.1).	64 FR 63209, November 19, 1999.	9 AAR 816, AAC R18–8–261 and 266, April 15, 2003.
Land Disposal Restrictions Phase IV—Technical Corrections Rule. (Checklist 183).	64 FR 56469, October 20, 1999.	9 AAR 816, AAC R18–8–261, 262, and 268, April 15, 2003.
Accumulation Time for Waste Water Treatment Sludges Rule. (Checklist 184 *).	65 FR 12378, March 8, 2000 ..	9 AAR 816, AAC R18–8–262, April 15, 2003.
Organobromine Production Wastes Vacatur (Checklist 185 *) ...	65 FR 14472, March 17, 2000	9 AAR 816, AAC R18–8–261 and 268, April 15, 2003.
Amendments to Streamline the NPDES Program Regulations; Round Two Rule. (Checklist 186).	65 FR 30886, May 15, 2000 ...	10 AAR 4364, AAC R18–8–270 and 271, December 4, 2004.
Petroleum Refining Process Wastes—Clarification (Checklist 187).	65 FR 36365, June 8, 2000	9 AAR 816, AAC R18–8–261 and 268, April 15, 2003.
Hazardous Air Pollutant Standards—Technical Corrections. (Checklist 188 *).	65 FR 42292, July 10, 2000. 66 FR 24270, May 14, 2001. 66 FR 35087, July 3, 2001.	10 AAR, AAC 4364 R18–8–261, 264 and 270, December 4, 2004.
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes. (Checklist 189).	65 FR 67068, November 8, 2000.	10 AAR, AAC 4364 R18–8–261 and 268, December 4, 2004.
Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil. (Checklist 190).	65 FR 81373, December 26, 2000.	10 AAR 4364, AAC R18–8–268, December 4, 2004.
Mixed Waste Rule. (Checklist 191 *)	66 FR 27218, May 16, 2001 ...	10 AAR 4364, AAC R18–8–266, December 4, 2004.
Mixture and Derived-From Rules Revisions. (Checklist 192 A *)	66 FR 27266, May 16, 2001 ...	10 AAR 4364, AAC R18–8–261 and 268, December 4, 2004.
Land Disposal Restrictions Correction. (Checklist 192 B)	66 FR 27266, May 16, 2001 ...	10 AAR 4364, AAC R18–8–268, December 4, 2004.
Change of Official EPA Mailing Address. (Checklist 193)	66 FR 34374, June 28, 2001 ..	10 AAR 4364, AAC R18–8–260, 261, 265, December 4, 2004.
Mixture and Derived-From Rules Revision II. (Checklist 194 *)	66 FR 50332, October 3, 2001	10 AAR 4364, AAC R18–8–261, December 4, 2004.

STATE ANALOGUES TO THE FEDERAL PROGRAM—Continued

Description of Federal requirement and checklist No. (* indicates optional)	**Federal Register** volume, page and date	Analogous Arizona Register (volume/page) and administrative code
Inorganic Chemical Manufacturing Wastes Identification and Listing. (Checklist 195).	66 FR 58258, November 20, 2001. 67 FR 17119, April 9, 2002.	10 AAR 4364, AAC R18–8–261 and 268, December 4, 2004.
CAMU Amendments. (Checklist 196 *)	67 FR 2962, January 22, 2002	10 AAR 4364, AAC R18–8–260 and 264, December 4, 2004.
Hazardous Air Pollutant Standards for Combustors: Interim Standards. (Checklist 197 *).	67 FR 67 2, February 13, 2002.	10 AAR 4364, AAC R18–8–264, 265, 266 and 270, December 4, 2004.
Hazardous Air Pollutant Standards for Combustors: Corrections. (Checklist 198).	67 FR 6968, February 14, 2002.	10 AAR 4364, AAC R18–8–266 and 270, December 4, 2004.
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste. (Checklist 199).	67 FR 11251, March 13, 2002	10 AAR 4364, AAC R18–8–261, December 4, 2004.
Zinc Fertilizer Rule. (Checklist 200)	67 FR 48393, July 24, 2002	11 AAR 5523, AAC R18–8–261, 266 and 268, February 4, 2006.
Treatment Variance for Radioactively Contaminated Batteries. (Checklist 201 *).	67 FR 62618, October 7, 2002	11 AAR 5523, AAC R18–8–268, February 4, 2006.
Hazardous Air Pollutant Standards for Hazardous Waste Combustors- Corrections 2. (Checklist 202 *).	67 FR 77687, December 19, 2002.	11 AAR 5523, AAC R18–8–270, February 4, 2006.
Recycled Used Oil Management Standards; Clarification (§ 261.5(j) correction only) . (Checklist 203 *).	68 FR 44659, July 30, 2003	11 AAR 5523, AAC R18–8–261(H), February 4, 2006.
Performance Track. (Checklist 204 *)	69 FR 21737, April 22, 2004. 69 FR 62217, October 25, 2004.	11 AAR 5523, AAC R18–8–262, February 4, 2006.
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks. (Checklist 205 *).	69 FR 22601 April 26, 2004	11 AAR 5523, AAC R18–8–264 and 265, February 4, 2006.
Nonwastewaters from Dyes and Pigments. (Checklist 206)	70 FR 9138, February 24, 2005. 70 FR 35032 June 13, 2005.	12 AAR 3061, AAC R18–8–261 and 268, October 1, 2006.
Uniform Hazardous Waste Manifest Rule. (Checklist 207)	70 FR 10776, March 4, 2005. 70 FR 35034, June 16, 2005.	12 AAR 3061, AAC R18–8–260, 261, 262, 263, 264 and 265, October 1, 2006.
Methods Innovation Rule and SW–846 Final Update IIIB (partial; no clarifications incorporated by reference from 40 CFR 279). (Checklist 208 *).	70 FR 34538, March 4, 2005. 70 FR 44150, June 16, 2005.	12 A.A.R 3061, AAC R18–8–260, 261, 264, 265, 266, 268 and 270, October 1, 2006.
Universal Waste Rule: Specific Provisions for Mercury Containing Equipment. (Checklist 209 *).	70 FR 45508, August 5, 2005	12 AAR 3061, AAC R18–8–260, 261, 264, 265, 266, 268, 270 and 273, October 1, 2006.
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (''Headworks exemptions''). (Checklist 211 *).	70 FR 57769, October 4, 2005	14 AAR 409, AAC R18–8–261, March 3, 2008.
NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II). (Checklist 212 *).	70 FR 59402, October 12, 2005.	14 AAR 409, AAC R18–8–260, 264, 265, 266 and 270, March 3, 2008.
Burden Reduction Initiative. (Checklist 213 *)	71 FR 16862, April 4, 2006	14 AAR 409, AAC R18–8–260, 261, 264, 265, 266, 268, and 270, March 3, 2008.
Corrections to Errors in the Code of Federal Regulations (partial; no corrections incorporated from Parts 267 or 279). (Checklist 214).	71 FR 40254, July 14, 2006	14 AAR 409, AAC R18–8–260, 261, 262, 264, 265, 266, 267, 268, 270, 271 and 273, March 3, 2008.
Cathode Ray Tubes Rule. (Checklist 215 *)	71 FR 42928, July 28, 2006	14 AAR 409, AAC R18–8–260 and 261, March 3, 2008.

G. Where are the revised state rules different from the federal rules?

Since 1984, Arizona hazardous waste rules have contained several procedural requirements that are more stringent than EPA's. These more stringent procedural requirements are authorized by Arizona Revised Statutes (ARS) section 49–922, which in directing Arizona to adopt hazardous waste rules, prohibits only nonprocedural standards that are more stringent than EPA:

1. Hazardous Waste Manifests. Arizona requires hazardous waste generators; transporters; and treatment, storage, and disposal facilities (TSDFs) to provide a copy of all hazardous waste manifests to Arizona monthly. [See AAC R18–8–262(I) and (J); R18–8–263(C), R18–8–264(J) and R18–8–265(J).] Federal regulations governing distribution of copies of the manifest do not require manifests to be provided to the state.

2. Annual Reports. Hazardous waste large quantity generators (LQGs) and TSDFs must submit reports to Arizona annually rather than every two years as the federal regulations require. [See AAC R18–8–260(E)(3); R18–8–262(H), R18–8–264(I) and R18–8–265(I).] Small quantity generators (SQGs) must also submit annual rather than biennial reports under R18–8–262(H).

3. Recyclers are required to submit annual reports to Arizona rather than no reports at all. [AAC R18–8–261(J)].

EPA cannot delegate the federal requirements in 40 CFR 261.39(a)(5) and 261.41 contained in the Cathode Ray Tubes Rule set forth in 71 FR 42928, July 28, 2006. While Arizona adopted these requirements by reference in 14 AAR 409, AAC R18–8–260 and 261, EPA will continue to implement these requirements.

EPA gave notice at 80 FR 18777 of the removal of the provisions at 40 CFR 261.4(a)(16) and 40 CFR 261.38 related to comparable fuels due to the D.C. Circuit's vacatur of the ''Hazardous

Waste Combustors Revised Standards'' Final Rule (63 FR 33782, June 19, 1998) in *Natural Res. Def. Council* v. *EPA*, 755 F.3d 1010 (D.C. Cir. 2014). This rule was previously adopted and approved as part of Arizona's authorized program, but in light of the vacatur, EPA no longer considers these provisions to be part of Arizona's federally authorized program.

Other than the differences discussed above, Arizona incorporates by reference the remaining federal rules listed in Section F; therefore, there are no significant differences between the remaining federal rules and the revised state rules being authorized today.

H. Who handles permits after the authorization takes effect?

Arizona will issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g)(1), gives EPA the authority to issue or deny permits or parts of permits for requirements for which the State is not authorized. Therefore, whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in Arizona for the new or revised HSWA standards until Arizona has received final authorization for such new or revised HSWA standards. EPA and Arizona have agreed to a joint permitting process for facilities covered by both the authorized program and standards under HSWA for which the State is not yet authorized, and for handling existing EPA permits after the State receives authorization.

I. How does today's action affect Indian country (18 U.S.C. 1151) in Arizona?

Arizona is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Cocopah Tribe of Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation; Havasupai Tribe of the Havasupai Reservation; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation; Navajo Nation; Quechan Tribe of the Fort Yuma Indian Reservation; Salt River Pima-Maricopa Indian Community of the Salt River Reservation; San Carlos Apache Tribe of the San Carlos Reservation; San Juan Southern Paiute Tribe of Arizona; Tohono O'odham Nation; Yavapai-Apache Nation of the Camp Verde Indian Reservation; and the Yavapai-Prescott Indian Tribe. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

J. What is codification and is EPA codifying Arizona's hazardous waste program as authorized in this rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized state rules in 40 CFR part 272. EPA is not codifying the authorization of Arizona's changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart D for this authorization of Arizona's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of Arizona's revised hazardous waste program under RCRA are exempted under Executive Order 12866. This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization, as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing

federal requirements, and impose no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898. 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 document 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 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). This action nevertheless will be effective 60 days after the final approval is published in the **Federal Register**.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 26, 2017.

Alexis Strauss,

Acting Regional Administrator, Region 9.

[FR Doc. 2017–21522 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3160 and 3170

[17X.LLWO310000.L13100000.PP0000]

RIN 1004–AE54

Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: On November 18, 2016, the Bureau of Land Management (BLM) published in the **Federal Register** a final rule entitled, ''Waste Prevention, Production Subject to Royalties, and Resource Conservation'' (2016 final rule). The BLM is now proposing to temporarily suspend or delay certain requirements contained in the 2016 final rule until January 17, 2019. The BLM is currently reviewing the 2016 final rule and wants to avoid imposing temporary or permanent compliance costs on operators for requirements that may be rescinded or significantly revised in the near future.

DATES: Send your comments on this proposed rule to the BLM on or before November 6, 2017. As explained later, the BLM is also requesting that the Office of Management and Budget (OMB) extend the control number (1004–0211) for the 24 information collection activities that would continue in this proposed rule. If you wish to comment on this request, please note that such comments should be sent directly to the OMB, and that the OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information collection revisions is best assured of being given full consideration if the OMB receives it by November 6, 2017.

ADDRESSES:

Mail: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE52.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Washington, DC 20003, Attention: Regulatory Affairs.

Federal eRulemaking Portal: https://www.regulations.gov. In the Searchbox, enter ''RIN 1004–AE54'' and click the ''Search'' button. Follow the instructions at this Web site. Comments on the information collection burdens: *Fax:* Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax 202–395–5806.

Electronic mail: OIRA_Submission@omb.eop.gov. Please indicate ''Attention: OMB Control Number 1004–0211,'' regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information collection burdens, you should provide the BLM with a copy, at one of the addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rule preamble.

FOR FURTHER INFORMATION CONTACT: Catherine Cook, Acting Division Chief, Fluid Minerals Division, 202–912–7145, or *ccook@blm.gov,* for information regarding the substance of this proposed rule or information about the BLM's Fluid Minerals program. For questions relating to regulatory process issues, contact Faith Bremner, Regulatory Analyst, at 202–912–7441, or *fbremner@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments by any of the methods described in the **ADDRESSES** section.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under ''**ADDRESSES:** Personal or messenger delivery'' during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we

cannot guarantee that we will be able to do so.

II. Background

The BLM's onshore oil and gas management program is a major contributor to our nation's oil and gas production. The BLM manages more than 245 million acres of Federal land and 700 million acres of subsurface estate, making up nearly a third of the nation's mineral estate. In fiscal year (FY) 2016, sales volumes from Federal onshore production lands accounted for 9 percent of domestic natural gas production, and 5 percent of total U.S. oil production. Over $1.9 billion in royalties were collected from all oil, natural gas, and natural gas liquids transactions in FY 2016 on Federal and Indian Lands. Royalties from Federal lands are shared with States. Royalties from Indian lands are collected for the benefit of the Indian owners.

In response to oversight reviews and a recognition of increased flaring from Federal and Indian leases, the BLM developed a final rule entitled, ''Waste Prevention, Production Subject to Royalties, and Resource Conservation,'' which was published in the **Federal Register** on November 18, 2016. See 81 FR 83008 (Nov. 18, 2016). The rule replaced the BLM's existing policy at that time, Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL–4A). The 2016 final rule was intended to: Reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian leases; clarify when produced gas lost through venting, flaring, or leaks is subject to royalties; and clarify when oil and gas production may be used royalty-free on-site. The 2016 final rule became effective on January 17, 2017. Many of the final rule's provisions are to be phased in over time, and are to become operative on January 17, 2018.

Immediately after the 2016 final rule was issued, industry groups and States with significant BLM-managed Federal and Indian minerals filed petitions for judicial review. The petitioners in this litigation are the Western Energy Alliance (WEA), the Independent Petroleum Association of America, the State of Wyoming, the State of Montana, the State of North Dakota, and the State of Texas. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. *Wyoming* v. *U.S. Dep't of the Interior,* Case No. 2:16–cv–00285–SWS (D. Wyo.); *W. Energy All.* v. *Zinke,* Case No. 16–cv–280–SWS (D. Wyo.).

Petitioners assert that the BLM was arbitrary and capricious in promulgating the 2016 final rule and that the rule exceeds the BLM's statutory authority. Shortly after filing petitions for judicial review, petitioners filed motions for a preliminary injunction, seeking a stay of the rule pending the outcome of the litigation. These motions were denied by the court on January 16, 2017, and the rule went into effect the following day. Although the court denied the motions for a preliminary injunction, it did express concerns that the BLM may have ''usurp[ed]'' the authority of the Environmental Protection Agency (EPA) and the States under the Clean Air Act, and questioned whether it was appropriate for the 2016 final rule to be justified based on its environmental and societal benefits, rather than on its resource conservation benefits alone. The next stage in the litigation will be the court's consideration of the merits of the petitioner's claims. It is possible that the court's decision on these claims could result in the 2016 final rule being overturned. On June 15, 2017, the Department of the Interior (Department) issued a **Federal Register** notice, pursuant to 5 U.S.C. 705, postponing the January 2018 compliance dates of the 2016 final rule pending judicial review. 82 FR 27430 (June 15, 2017).

In the Regulatory Impact Analysis (RIA) for the 2016 final rule, the BLM estimated that the requirements of the 2016 final rule would impose compliance costs, not including potential cost savings for product recovery, of approximately $114 million to $279 million per year (2016 RIA at 4). The BLM had concluded that, while many of the requirements were consistent with EPA regulations for new sources, current industry practice, or similar to the requirements found in some existing State regulations, the 2016 final rule would be an economically significant rule with estimated costs and benefits exceeding $100 million per year (2016 RIA at 138). Comments received by many oil and gas companies and trade associations representing members of the oil and gas industry suggested that the BLM's proposed and final rules were unnecessary and would cause substantial harm to the industry. During the litigation following the issuance of the 2016 final rule, the petitioners argued that the BLM underestimated the compliance costs of the final rule and that the costs would drive the industry away from Federal and Indian lands, thereby reducing royalties and harming State and tribal economies. The petitioners also argued that the final rule would cause marginal wells to be shut-in, thereby ceasing production and reducing economic benefits to local, State, tribal, and Federal governments. The BLM is concerned that the RIA for the 2016 final rule may have underestimated costs and overestimated benefits, and is therefore presently reviewing that analysis for potential inaccuracies. In any event, the RIA for the 2016 rule indicates that the rule poses a substantial burden on industry, particularly those requirements that are set to become effective on January 17, 2018.

Since late January 2017, the President has issued several Executive Orders that necessitate a review of the 2016 final rule by the Department. On January 30, 2017, the President issued Executive Order 13771, entitled, ''Reducing Regulation and Controlling Regulatory Costs,'' which requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. In addition, on March 28, 2017, the President issued Executive Order 13783, entitled, ''Promoting Energy Independence and Economic Growth.'' Section 7(b) of Executive Order 13783 directs the Secretary of the Interior to review four specific rules, including the 2016 final rule, for consistency with the policy articulated in section 1 of the Order and, ''if appropriate,'' to publish proposed rules suspending, revising, or rescinding those rules. Among other things, section 1 of Executive Order 13783 states that ''[i]t is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.''

To implement Executive Order 13783, Secretary of the Interior Ryan Zinke issued Secretarial Order No. 3349, entitled, ''American Energy Independence'' on March 29, 2017, which, among other things, directs the BLM to review the 2016 final rule to determine whether it is fully consistent with the policy set forth in section 1 of Executive Order 13783. The BLM conducted an initial review of the 2016 final rule and found that it appears to be inconsistent with the policy in section 1 of Executive Order 13783. The BLM found that some provisions of the rule appear to add regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Following up on its initial review, the BLM is currently reviewing the 2016 final rule to develop an appropriate proposed

revision—to be promulgated through notice-and-comment rulemaking—that would propose to align the 2016 final rule with the policies set forth in section 1 of Executive Order 13783.

III. Discussion of the Proposed Rule

A. Summary and Request for Comment

Today, the BLM is proposing to temporarily suspend or delay certain requirements contained in the 2016 final rule until January 17, 2019. The BLM is currently reviewing the 2016 final rule, as directed by the aforementioned Executive Orders and by Secretarial Order No. 3349. The BLM wants to avoid imposing temporary or permanent compliance costs on operators for requirements that might be rescinded or significantly revised in the near future. The BLM also wishes to avoid expending scarce agency resources on implementation activities (internal training, operator outreach/education, developing clarifying guidance, etc.) for such potentially transitory requirements.

For certain requirements in the 2016 final rule that have yet to be implemented, this proposed rule would temporarily postpone the implementation dates until January 17, 2019, or for one year. For certain requirements in the 2016 final rule that are currently in effect, this proposed rule would temporarily suspend their effectiveness until January 17, 2019. A detailed discussion of the proposed suspensions and delays is provided below. The BLM has attempted to tailor the proposed rule so as to target the requirements of the 2016 final rule for which immediate regulatory relief appears to be particularly justified. Although the requirements of the 2016 final rule that would not be suspended under the proposed rule may ultimately be revised in the near future, the BLM is not proposing to suspend them because it does not, at this time, believe that suspension is necessary.

The BLM promulgated the 2016 final rule, and now proposes to suspend and delay certain provisions of that rule, pursuant to its authority under the following statutes: The Mineral Leasing Act of 1920 (30 U.S.C. 188–287), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–360), the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701–1758), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701–1785), the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a–g), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101–2108), and the Act of March 3, 1909 (25 U.S.C. 396). See 81 FR 83008 and 83019–83021 (Nov. 18, 2016). These statutes authorize the Secretary of the Interior to promulgate such rules and regulations as may be necessary to carry out the statutes' various purposes.[1] The Federal and Indian mineral leasing statutes share a common purpose of promoting the development of Federal and Indian oil and gas resources for the financial benefit of the public and Indian mineral owners.[2] In order to ensure that the development of Federal and Indian oil and gas resources will not be unnecessarily hindered by regulatory burdens, the BLM is exercising its inherent authority [3] to reconsider the 2016 final rule. The suspension of requirements proposed today is a part of the BLM's reconsideration process.

The BLM seeks comment on this proposed rule. Issues of particular interest to the BLM include the necessity of the proposed suspensions and delays, the costs and benefits associated with the proposed suspensions and delays, and whether suspension of other requirements of the 2016 rule is warranted. The BLM is also interested in the appropriate length of the proposed suspension and delays and would like to know whether the period should be longer or shorter (*e.g.,* six months, 18 months, or 2 years). The BLM has allowed a 30-day comment period for this proposed rule, which the BLM believes will afford the public a meaningful opportunity to comment. This proposed rule is a straightforward suspension and delay of regulatory provisions that were (in a proposed form) themselves recently the object of public comment procedures. Because this proposal is a narrow one, involving a simple and temporary suspension and delay of regulatory provisions with which interested parties are likely already familiar, the BLM believes that the 30-day comment period is appropriate.

B. Section-by-Section Discussion

43 CFR 3162.3–1(j)—Drilling Applications and Plans

In the 2016 final rule, the BLM added a paragraph (j) to 43 CFR 3162.3–1, which presently requires that when submitting an Application for Permit to Drill (APD) for an oil well, an operator must also submit a waste-minimization plan. Submission of the plan is required for approval of the APD, but the plan is not itself part of the APD, and the terms of the plan are not enforceable against the operator. The purpose of the waste-minimization plan is for the operator to set forth a strategy for how the operator will comply with the requirements of 43 CFR subpart 3179 regarding the control of waste from venting and flaring from oil wells.

The waste-minimization plan must include information regarding: The anticipated completion date(s) of the proposed oil well(s); a description of anticipated production from the well(s); certification that the operator has provided one or more midstream processing companies with information about the operator's production plans, including the anticipated completion dates and gas production rates of the proposed well or wells; and identification of a gas pipeline to which the operator plans to connect. Additional information is required when an operator cannot identify a gas pipeline with sufficient capacity to accommodate the anticipated production from the proposed well, including: A gas pipeline system location map showing the proposed well(s); the name and location of the gas processing plant(s) closest to the proposed well(s); all existing gas trunklines within 20 miles of the well, and proposed routes for connection to a trunkline; the total volume of produced gas, and percentage of total produced gas, that the operator is currently venting or flaring from wells in the same field and any wells within a 20-mile radius of that field; and a detailed evaluation, including estimates of costs and returns, of potential on-site capture approaches.

In the RIA for the 2016 final rule, the BLM estimated that the administrative burden of the waste-minimization plan requirements would be roughly $1 million per year for the industry and $180,000 per year for the BLM (2016 RIA at 96 and 100). The BLM is currently reviewing the requirements of § 3162.3–1(j) in order to determine whether the burden it imposes on operators is necessary and whether this burden can be reduced. The BLM is also evaluating whether there are circumstances in which compliance with § 3162.3–1(j) is infeasible because some of the required information is in the possession of a midstream company that is not in a position to share it with the operator. The BLM is considering narrowing the required information and

[1] 30 U.S.C. 189 (MLA); 30 U.S.C. 359 (MLAAL); 30 U.S.C. 1751(a) (FOGRMA); 43 U.S.C. 1740 (FLPMA); 25 U.S.C. 396d (IMLA); 25 U.S.C. 2107 (IMDA); 25 U.S.C. 396.

[2] *See, e.g., California Co.* v. *Udall,* 296 F.2d 384, 388 (D.C. Cir. 1961) (noting that the MLA was intended to promote wise development of . . . natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public.'').

[3] *See Ivy Sports Med., LLC* v. *Burwell,* 767 F.3d 81, 86 (D.C. Cir. 2014) (noting ''oft-repeated'' principle that the ''power to reconsider is inherent in the power to decide'').

is also considering whether submission of a State waste-minimization plan, such as those required by New Mexico and North Dakota, would serve the purpose of § 3162.3–1(j). While the BLM conducts this review and considers revising § 3162.3–1, the BLM does not believe that generating and reviewing lengthy, unenforceable waste-minimization plans is a prudent use of operator or BLM resources. The BLM is therefore proposing to suspend the waste minimization plan requirement of § 3162.3–1(j) until January 17, 2019.

This proposed rule would revise § 3162.3–1 by adding ''Beginning January 17, 2019'' to the beginning of paragraph (j). The rest of this paragraph would remain the same as in the 2016 final rule and the introductory paragraph is repeated in the proposed rule text only for context.

43 CFR 3179.7—Gas Capture Requirement

In the 2016 final rule, the BLM sought to constrain routine flaring through the imposition of a ''capture percentage'' requirement, requiring operators to capture a certain percentage of the gas they produce, after allowing for a certain volume of flaring per well. The capture-percentage requirement would become more stringent over a period of years, beginning with an 85 percent capture requirement (5,400 Mcf per well flaring allowable) in January 2018, and eventually reaching a 98 percent capture requirement (750 Mcf per well flaring allowable) in January 2026. An operator would choose whether to comply with the capture targets on each of the operator's leases, units or communitized areas, or on a county-wide or state-wide basis.

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of up to $162 million per year and generate cost savings from product recovery of up to $124 million per year, with both costs and cost savings increasing as the requirements increased in stringency (2016 RIA at 49).

The BLM is currently considering whether the capture-percentage requirement of § 3179.7 is unnecessarily complex and whether it will, in fact, be a significant improvement on the requirements of NTL–4A. The BLM is considering whether the NTL–4A framework can be applied in a manner that addresses any inappropriate levels of flaring, and whether market-based incentives (*i.e.,* royalty obligations) could improve capture in a more straightforward and efficient manner. Finally, the BLM is considering whether the need for a complex capture-percentage requirement could be obviated through other BLM efforts to facilitate pipeline development. Rather than require operators to institute new processes and adjust their plans for development to meet a capture-percentage requirement that may be rescinded or revised as a result of the BLM's review, the BLM is proposing to delay for one year the compliance dates for § 3179.7's capture requirements. This delay would allow the BLM sufficient time to conduct notice-and-comment rulemaking to determine whether the capture percentage requirements should be rescinded or revised and would prevent operators from being unnecessarily burdened by regulatory requirements that are subject to change.

This proposed rule would revise the compliance dates in paragraphs (b), (b)(1) through (b)(4), and (c)(2)(i) through (vii) of § 3179.7 to begin January 17, 2019. Paragraphs (c), (c)(1), and the introductory text of (c)(2) would remain the same as in the 2016 final rule and are repeated in the proposed rule text only for context.

43 CFR 3179.9—Measuring and Reporting Volumes of Gas Vented and Flared From Wells

Section 3179.9 requires operators to estimate (using estimation protocols) or measure (using a metering device) all flared and vented gas, whether royalty-bearing or royalty-free. This section further provides that specific requirements apply when the operator is flaring 50 Mcf or more of gas per day from a high-pressure flare stack or manifold, based on estimated volumes from the previous 12 months, or based on estimated volumes over the life of the flare, whichever is shorter. Beginning on January 17, 2018, if this volume threshold is met, § 3179.9(b) would require the operator to measure the volume of the flared gas, or calculate the volume of the flared gas based on the results of a regularly performed gas-to-oil ratio test, so as to allow the BLM to independently verify the volume, rate, and heating value of the flared gas.

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of about $4 million to $7 million per year (2016 RIA at 52).

The BLM is presently reviewing § 3179.9 to determine whether the additional accuracy associated with the measurement and estimation required by § 3179.9(b) justifies the burden it would place on operators. The BLM is considering whether it would make more sense to allow the BLM to require measurement or estimation on a case-by-case basis, rather than imposing a blanket requirement on all operators. In order to avoid unnecessary compliance costs on the part of operators, the BLM is proposing to delay the compliance date in § 3179.9 until January 17, 2019.

This proposed rule would revise the compliance date in § 3179.9(b)(1). The rest of paragraph (b)(1) would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

43 CFR 3179.10—Determinations Regarding Royalty-Free Flaring

Section 3179.10(a) provides that approvals to flare royalty free that were in effect as of January 17, 2017, will continue in effect until January 17, 2018. The purpose of this provision was to provide a transition period for operators who were operating under existing approvals for royalty-free flaring. Because the BLM's review of the 2016 final rule could result in rescission or substantial revision of the rule, the BLM believes that terminating pre-existing flaring approvals in January 2018 would be premature and disruptive and would introduce needless regulatory uncertainty for operators with existing flaring approvals. The BLM is therefore proposing to extend the end of the transition period provided for in § 3179.10(a) to January 17, 2019.

This proposed rule would revise the date in paragraph (a) and replace ''as of the effective date of this rule'' with ''as of January 17, 2017,'' which is the effective date of the 2016 final rule, for clarity. This proposed rule would not otherwise revise paragraph (a), but the rest of the paragraph would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

43 CFR 3179.101—Well Drilling

Section 3179.101(a) requires that gas reaching the surface as a normal part of drilling operations be used or disposed of in one of four ways: (1) Captured and sold; (2) Directed to a flare pit or flare stack; (3) Used in the operations on the lease, unit, or communitized area; or (4) Injected. Section 3179.101(a) also specifies that gas may not be vented, except under the circumstances specified in § 3179.6(b) or when it is technically infeasible to use or dispose of the gas in one of the ways specified above. Section 3179.101(b) states that gas lost as a result of a loss of well control will be classified as avoidably lost if the BLM determines that the loss of well control was due to operator negligence.

The BLM is currently reviewing § 3179.101 to determine whether it is

necessary in light of current operator practices. The experience of BLM field office personnel indicates that operators would typically dispose of gas during well drilling consistent with § 3179.101(a). The primary effect of § 3179.101, therefore, may be to impose a regulatory constraint on operators in exceptional circumstances where the operator must make a case-specific judgment about how to safely and effectively dispose of the gas. The BLM is therefore proposing to suspend the effectiveness of § 3179.101 until January 17, 2019, while the BLM completes its review of § 3179.101 and decides whether to propose permanently revising or rescinding it through notice-and-comment rulemaking.

This proposed rule would add a new paragraph (c) making it clear that the operator must comply with § 3179.101 beginning January 17, 2019.

43 CFR 3179.102—Well Completion and Related Operations

Section 3179.102 addresses gas that reaches the surface during well-completion, post-completion, and fluid-recovery operations after a well has been hydraulically fractured or refractured. It requires the gas to be used or disposed of in one of four ways: (1) Captured and sold; (2) Directed to a flare pit or stack, subject to a volumetric limitation in § 3179.103; (3) Used in the lease operations; or (4) Injected. Section 3179.102 specifies that gas may not be vented, except under the narrow circumstances specified in § 3179.6(b) or when it is technically infeasible to use or dispose of the gas in one of the four ways specified above. Section 3179.102(b) provides that an operator will be deemed to be in compliance with its gas capture and disposition requirements if the operator is in compliance with the requirements for control of gas from well completions established under Environmental Protection Agency (EPA) regulations 40 CFR part 60, subparts OOOO or OOOOa regulations, or if the well is not a ''well affected facility'' under those regulations.

The BLM is currently reviewing § 3179.102 to determine whether it is necessary in light of current operator practices and the analogous EPA regulations in 40 CFR part 60, subparts OOOO and OOOOa. The experience of BLM field office personnel indicates that operators would typically dispose of gas during well completions and related operations consistent with § 3179.102(a). The BLM also suspects that most of the well completions and related operations that would otherwise be covered by § 3179.102 are actually exempted under § 3179.102(b). Considering current industry practice and the overlap with EPA regulations, the primary effect of § 3179.102 may be to generate confusion about regulatory compliance during well-drilling and related operations. The BLM is therefore proposing to suspend the effectiveness of § 3179.102 until January 17, 2019, while the BLM completes its review of § 3179.102 and decides whether to permanently revise or rescind it through notice-and-comment rulemaking.

This proposed rule would add a new paragraph (e) making it clear that operators must comply with § 3179.102 beginning January 17, 2019.

43 CFR 3179.201—Equipment Requirements for Pneumatic Controllers

Section 3179.201 addresses pneumatic controllers that use natural gas produced from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease. Section 3179.201 applies to such controllers if the controllers: (1) Have a continuous bleed rate greater than 6 standard cubic feet per hour (scf/hour) (''high-bleed'' controllers); and (2) Are not covered by EPA regulations that prohibit the new use of high-bleed pneumatic controllers (40 CFR part 60, subparts OOOO or OOOOa), but would be subject to those regulations if the controllers were new, modified, or reconstructed sources. Section 3179.201(b) requires the applicable pneumatic controllers to be replaced with controllers (including, but not limited to, continuous or intermittent pneumatic controllers) having a bleed rate of no more than 6 scf/hour, subject to certain exceptions. Section 3179.201(d) requires that this replacement occur no later than January 17, 2018, or within 3 years from the effective date of the rule if the well or facility served by the controller has an estimated remaining productive life of 3 years or less.

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of about $2 million per year and generate cost savings from product recovery of $3 million to $4 million per year (2016 RIA at 56).

The BLM is currently reviewing § 3179.201 to determine whether it should be revised or rescinded. The BLM is considering whether § 3179.201 is necessary in light of the analogous EPA regulations and the fact that operators are likely to adopt more efficient equipment in cases where it makes economic sense for them to do so. The BLM does not believe that operators should be required to make equipment upgrades to comply with § 3179.201 until the BLM has had an opportunity to review its requirements and revise them through notice-and-comment rulemaking. The BLM is therefore proposing to delay the compliance date stated in § 3179.201 until January 17, 2019.

This proposed rule would revise the first sentence of paragraph (d) by replacing ''no later than 1 year after the effective date of this section'' with ''by January 17, 2019.'' This proposed rule would also replace ''the effective date of this section'' with ''January 17, 2017'' the two times that it appears in the second sentence of paragraph (d). This proposed rule would not otherwise revise paragraph (d), but the rest of the paragraph would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

43 CFR 3179.202—Requirements for Pneumatic Diaphragm Pumps

Section 3179.202 establishes requirements for operators with pneumatic diaphragm pumps that use natural gas produced from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease. It applies to such pumps if they are not covered under EPA regulations at 40 CFR part 60, subpart OOOOa, but would be subject to that subpart if they were a new, modified, or reconstructed source. For covered pneumatic pumps, § 3179.202 requires that the operator either replace the pump with a zero-emissions pump or route the pump exhaust to processing equipment for capture and sale. Alternatively, an operator may route the exhaust to a flare or low-pressure combustion device if the operator makes a determination (and notifies the BLM through a Sundry Notice) that replacing the pneumatic diaphragm pump with a zero-emissions pump or capturing the pump exhaust is not viable because: (1) A pneumatic pump is necessary to perform the function required; and (2) Capturing the exhaust is technically infeasible or unduly costly. If an operator makes this determination and has no flare or low-pressure combustor on-site, or routing to such a device would be technically infeasible, the operator is not required to route the exhaust to a flare or low-pressure combustion device. Under § 3179.202(h), an operator must replace its covered pneumatic diaphragm pump or route the exhaust gas to capture or flare beginning no later than January 17, 2018.

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of about $4 million per year and generate cost savings from

product recovery of $2 million to $3 million per year (2016 RIA at 61).

The BLM is currently reviewing § 3179.202 to determine whether it should be rescinded or revised. Analogous EPA regulations apply to new, modified, and reconstructed sources, therefore limiting the applicability of § 3179.202. In addition, the BLM is concerned that requiring zero-emissions pumps may not conserve gas in some cases. The volume of royalty-free gas used to generate electricity to provide the power necessary to operate a zero-emission pump could exceed the volume of gas necessary to operate the pneumatic pump that the zero-emission pump would replace. The BLM does not believe that operators should be required to make equipment upgrades to comply with § 3179.202 until the BLM has had an opportunity to review its requirements and revise them through notice-and-comment rulemaking. The BLM is therefore proposing to delay the compliance date stated in § 3179.202 until January 17, 2019.

This proposed rule would revise paragraph (h) by replacing ''no later than 1 year after the effective date of this section'' in the first sentence with ''by January 17, 2019'' and would also replace ''the effective date of this section'' with ''January 17, 2017'' the two times that it appears later in the same sentence. This proposed rule would not otherwise revise paragraph (h); the rest of the paragraph would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

43 CFR 3179.203—Storage Vessels

Section 3179.203 applies to crude oil, condensate, intermediate hydrocarbon liquid, or produced-water storage vessels that contain production from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease, and that are not subject to 40 CFR part 60, subparts OOOO or OOOOa, but would be if they were new, modified, or reconstructed sources. If such storage vessels have the potential for volatile organic compound (VOC) emissions equal to or greater than 6 tons per year (tpy), § 3179.203 requires operators to route all gas vapor from the vessels to a sales line. Alternatively, the operator may route the vapor to a combustion device if it determines that routing the vapor to a sales line is technically infeasible or unduly costly. The operator also may submit a Sundry Notice to the BLM that demonstrates that compliance with the above options would cause the operator to cease production and abandon significant recoverable oil reserves under the lease due to the cost of compliance. Pursuant to § 3179.203(c), operators must meet these requirements for covered storage vessels by January 17, 2018 (unless the operator will replace the storage vessel in order to comply, in which case it has a longer time to comply).

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of about $7 million to $8 million per year and generate cost savings from product recovery of up to $200,000 per year (2016 RIA at 74).

The BLM is currently reviewing § 3179.203 to determine whether it should be rescinded or revised. The BLM is considering whether § 3179.203 is necessary in light of analogous EPA regulations and whether the costs associated with compliance are justified. The BLM does not believe that operators should be required to make upgrades to their storage vessels in order to comply with § 3179.203 until the BLM has had an opportunity to review its requirements and revise them through notice-and-comment rulemaking. The BLM is therefore proposing to delay the January 17, 2018, compliance date in § 3179.203 until January 17, 2019.

This proposed rule would revise the first sentence of paragraph (b) by replacing ''Within 60 days after the effective date of this section'' with ''Beginning January 17, 2019'' and by adding ''after January 17, 201'' between the words ''vessel'' and ''the operator.'' This proposed rule would also revise the introductory text of paragraph (c) by replacing ''no later than one year after the effective date of this section'' with ''by January 17, 2019'' and by changing ''or three years if'' to ''or by January 17, 2020, if '' to account for removing the reference to ''the effective date of this section.'' This proposed rule would not otherwise revise paragraphs (b) and (c), and the rest of these paragraphs would remain the same as in the 2016 final rule and are repeated in the proposed rule text only for context.

43 CFR 3179.204—Downhole Well Maintenance and Liquids Unloading

Section 3179.204 establishes requirements for venting and flaring during downhole well maintenance and liquids unloading. It requires the operator to use practices for such operations that minimize vented gas and the need for well venting, unless the practices are necessary for safety. Section 3179.204 also requires that for wells equipped with a plunger lift system or an automated well-control system, the operator must optimize the operation of the system to minimize gas losses. Under § 3179.204, before an operator manually purges a well for the first time, the operator must document in a Sundry Notice that other methods for liquids unloading are technically infeasible or unduly costly. In addition, during any liquids unloading by manual well purging, the person conducting the well purging is required to be present on-site to minimize to the maximum extent practicable any venting to the atmosphere. This section also requires the operator to maintain records of the cause, date, time, duration and estimated volume of each venting event associated with manual well purging, and to make those records available to the BLM upon request. Additionally, operators are required to notify the BLM by Sundry Notice within 30 days after the following conditions are met: (1) The cumulative duration of manual well-purging events for a well exceeds 24 hours during any production month; or (2) The estimated volume of gas vented in the process of conducting liquids unloading by manual well purging for a well exceeds 75 Mcf during any production month. In the RIA for the 2016 final rule, the BLM estimated that these requirements would impose costs of about $6 million per year and generate cost savings from product recovery of about $5 million to $9 million per year (2016 RIA at 66). In addition, there would be estimated administrative burdens associated with these requirements of $323,000 per year for the industry and $37,000 per year for the BLM (2016 RIA at 98 and 101).

The BLM is currently reviewing § 3179.204 to determine whether it should be rescinded or revised. The BLM does not believe that operators should be burdened with the operational and reporting requirements imposed by § 3179.204 until the BLM has had an opportunity to review them and, if appropriate, revise them through notice-and-comment rulemaking. In addition, as part of this review, the BLM would want to review how these data could be reported in a consistent manner among operators. The BLM is therefore proposing to suspend the effectiveness of § 3179.204 until January 17, 2019.

This proposed rule would add a new paragraph (i), making it clear that operators must comply with § 3179.204 beginning January 17, 2019.

43 CFR 3179.301—Operator Responsibility

Sections 3179.301 through 3179.305 establish leak detection, repair, and reporting requirements for: (1) Sites and equipment used to produce, process, treat, store, or measure natural gas from

or allocable to a Federal or Indian lease, unit, or communitization agreement; and (2) Sites and equipment used to store, measure, or dispose of produced water on a Federal or Indian lease. Section 3179.302 prescribes the instruments and methods that may be used for leak detection. Section 3179.303 prescribes the frequency for inspections and § 3179.304 prescribes the time frames for repairing leaks found during inspections. Finally, § 3179.305 requires operators to maintain records of their leak detection and repair activities and submit an annual report to the BLM. Pursuant to § 3179.301(f), operators must begin to comply with the leak detection and repair requirements of §§ 3179.301 through 3179.305 before: (1) January 17, 2018, for sites in production prior to January 17, 2017; (2) 60 days after beginning production for sites that began production after January 17, 2017; and (3) 60 days after a site that was out of service is brought back into service and re-pressurized.

In the RIA for the 2016 final rule, the BLM estimated that these requirements would impose costs of about $83 million to $84 million per year and generate cost savings from product recovery of about $12 million to $21 million per year (2016 RIA at 91). In addition, there would be estimated administrative burdens associated with these requirements of $3.9 million per year for the industry and over $1 million per year for the BLM (2016 RIA at 98 and 102).

The BLM is currently reviewing § 3179.301 through § 3179.305 to determine whether they should be revised or rescinded. The BLM is considering whether these requirements are necessary in light of comparable EPA and State leak detection and repair regulations. The BLM is considering whether the reporting burdens imposed by these sections are justified and whether the substantial compliance costs could be mitigated by allowing for less frequent and/or non-instrument-based inspections or by exempting wells that have low potential to leak natural gas. The BLM does not believe that operators should be burdened with the significant compliance costs imposed by these sections until the BLM has had an opportunity to review them and, if appropriate, revise them through notice-and-comment rulemaking. The BLM is therefore proposing to delay the effective dates for these sections until January 17, 2019, by revising § 3179.301(f).

This proposed rule would revise paragraph (f)(1) by replacing ''Within one year of January 17, 2017 for sites that have begun production prior to January 17, 2017;'' with ''By January 17, 2019, for all existing sites.'' This proposed rule would also revise paragraph (f)(2) by adding ''new'' between the words ''for'' and ''sites'' and by replacing the existing date with ''January 17, 2019.'' Finally, this proposed rule would revise paragraph (f)(3) by adding ''an existing'' between the words ''when'' and ''site'' and by adding ''after January 17, 2019'' to the end of the sentence. This proposed rule would not otherwise revise paragraph (f), and the rest of the paragraph would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

C. Summary of Estimated Impacts

The BLM reviewed the proposed rule and conducted an RIA and Environmental Assessment (EA) that examine the impacts of the proposed requirements. The following discussion is a summary of the proposed rule's economic impacts. The RIA and draft EA that we prepared have been posted in the docket for the proposed rule on the *Federal eRulemaking Portal: https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE54'' and click the ''Search'' button. Follow the instructions at this Web site.

The suspension or delay in the implementation of certain requirements in the 2016 final rule would postpone the impacts estimated previously to the near-term future. That is to say, impacts that we previously estimated would occur in 2017 are now estimated to occur in 2018, impacts that we previously estimated would occur in 2018 are now estimated to occur in 2019, and so on. In the RIA for this proposed rule, we track this shift in impacts over the 10-year period following the delay. A 10-year period of analysis was also used in the RIA prepared for the 2016 final rule. Except for some notable changes, the 2017 RIA uses the impacts estimated and underlying assumptions used by the BLM for the RIA prepared for the 2016 final rule, published in November 2016. The BLM's proposed rule would temporarily suspend or delay almost all of the requirements in the 2016 final rule that we estimated would pose a compliance burden to operators and generate benefits of gas savings or reductions in methane emissions.

Estimated Reductions in Compliance Costs (Excluding Cost Savings)

First, we examine the reductions in compliance costs excluding the savings that would have been realized from product recovery. The BLM's proposed rule would temporarily suspend or delay almost all of the requirements in the 2016 final rule that we estimated would pose a compliance burden to operators. We estimate that suspending or delaying the targeted requirements of the 2016 final rule until January 17, 2019, would substantially reduce compliance costs during the period of the suspension or delay (2017 RIA at 29).

Impacts in year 1:

- A reduction in compliance costs of $114 million (using a 7 percent discount rate to annualize capital costs) or $110 million (using a 3 percent discount rate to annualize capital costs).

Impacts from 2017–2027:

- Total reduction in compliance costs ranging from $73 million to $91 million (net present value (NPV) using a 7 percent discount rate) or $40 million to $50 million (NPV using a 3 percent discount rate).

Estimated Reduction in Benefits

The BLM's proposed rule would temporarily suspend or delay almost all of the requirements in the 2016 final rule that we estimated would generate benefits of gas savings or reductions in methane emissions. We estimate that the proposed rule would result in forgone benefits, since estimated cost savings that would have come from product recovery would be deferred and the emissions reductions would also be deferred (2017 RIA at 32).

Impacts in year 1:

- A reduction in cost savings of $19 million.

Impacts from 2017–2027:

- Total reduction in cost savings of $36 million (NPV using a 7 percent discount rate) or $21 million (NPV using a 3 percent discount rate).

We estimate that the proposed rule would also result in additional methane and VOC emissions of 175,000 and 250,000 tons, respectively, in year 1 (2017 RIA at 32).

These estimated emissions are measured as the change from the baseline environment, which is the 2016 final rule's requirements being implemented per the 2016 final rule schedule. Since the proposed rule would delay the implementation of those requirements, the estimated benefits of the 2016 final rule would be forgone during the temporary suspension or delay.

The BLM used interim domestic values of the carbon dioxide and methane to value the forgone emissions reductions resulting from the delay (see the discussion of social cost of greenhouse gases in the 2017 RIA at Section 3.2 and Appendix).

Impact in Year 1:

• Forgone methane emissions reductions valued at $8 million (using interim domestic SC–CH_4 based on a 7 percent discount rate) or $26 million (using interim domestic SC–CH_4 based on a 3 percent discount rate).

Impacts from 2017–2027:

• Forgone methane emissions reductions valued at $1.9 million (NPV and interim domestic SC–CH_4 using a 7 percent discount rate); or

• Forgone methane emissions reductions valued at $300,000 (NPV and interim domestic SC–CH_4 using a 3 percent discount rate).

Estimated Net Benefits

The proposed rule is estimated to result in positive net benefits, meaning that the reduction of compliance costs would exceed the reduction in cost savings and the cost of emissions additions (2017 RIA at 36).

Impact in year 1:

• Net benefits of $83–86 million (using interim domestic SC–CH_4 based on a 7 percent discount rate) or $64–68 million (using interim domestic SC–CH_4 based on a 3 percent discount rate).

Impacts from 2017–2027:

• Total net benefits ranging from $35–52 million (NPV and interim domestic SC–CH_4 using a 7 percent discount rate); or

• Total net benefits ranging from $19–29 million (NPV and interim domestic SC–CH_4 using a 3 percent discount rate).

Energy Systems

The proposed rule is expected to influence the production of natural gas, natural gas liquids, and crude oil from onshore Federal and Indian oil and gas leases, particularly in the short-term. However, since the relative changes in production are expected to be small, we do not expect that the proposed rule would significantly impact the price, supply, or distribution of energy.

We estimate the following incremental changes in production, noting the representative share of the total U.S. production in 2015 for context (2017 RIA at 41).

Annual Impacts:

• A decrease in natural gas production of 9.0 billion cubic feet (Bcf) in year 1 (0.03 percent of the total U.S. production).

• An increase in crude oil production of 91,000 barrels in year 2 (0.003 percent of the total U.S. production). There is no estimated change in crude oil production in year 1.

Royalty Impacts

In the short-term, the rule is expected to decrease natural gas production from Federal and Indian leases, and likewise, is expected to reduce annual royalties to the Federal Government, tribal governments, States, and private landowners. From 2017–2027, however, we expect a small increase in total royalties, likely due to production slightly shifting into the future where commodity prices are expected to be higher.

Royalty payments are recurring income to Federal or tribal governments and costs to the operator or lessee. As such, they are transfer payments that do not affect the total resources available to society. An important but sometimes difficult problem in cost estimation is to distinguish between real costs and transfer payments. While transfers should not be included in the economic analysis estimates of the benefits and costs of a regulation, they may be important for describing the distributional effects of a regulation.

We estimate a reduction in royalties of $2.6 million in year 1 (2017 RIA at 43). This amount represents about 0.2 percent of the total royalties received from oil and gas production on Federal lands in FY 2016. However, from 2017–2027, we estimate an increase in total royalties of $1.26 million (NPV using a 7 percent discount rate) or $380,000 (NPV using a 3 percent discount rate).

Consideration of Alternative Approaches

In developing this proposed rule, the BLM considered alternative timeframes for which it could suspend or delay the requirements (*e.g.,* 6 months and 2 years). Ultimately, the BLM decided to propose a suspension or delay for one year, which it believes to be the minimum length of time practicable within which to review the 2016 final rule and complete a notice-and-comment rulemaking to revise that regulation. We note that, based on the progress of the review during this rulemaking process, the BLM may revise the length of the suspension or delay for the final rule.

A shorter suspension of delay of the same 2016 final rule requirements would result in a smaller reduction in compliance costs, smaller reduction in cost savings, and a smaller amount of forgone emissions reductions, relative to the proposal (2017 RIA at 49–50). Meanwhile, a longer suspension or delay of the same 2016 final rule requirements would result in a larger reduction in compliance costs, larger reduction in cost savings, and larger amount of forgone emissions reductions, relative to the proposal (2017 RIA at 50).

Employment Impacts

The proposed rule would temporarily suspend or delay certain requirements of the BLM's 2016 final rule on waste prevention and is a temporary deregulatory action. As such, we estimate that it would result in a reduction of compliance costs for operators of oil and gas leases on Federal and Indian lands. Therefore, it is likely that the impact, if any, on the employment would be positive.

In the RIA for the 2016 final rule, the BLM concluded that the requirements were not expected to impact the employment within the oil and gas extraction, drilling oil and gas wells, and support activities industries, in any material way. This determination was based on several reasons. First, the estimated incremental gas production represented only a small fraction of the U.S. natural gas production volumes. Second, the estimated compliance costs represented only a small fraction of the annual net incomes of companies likely to be impacted. Third, for those operations that would have been impacted to the extent that the compliance costs would force the operator to shut in production, the 2016 final rule had provisions that would exempt these operations from compliance. Based on these factors, the BLM determined that the 2016 final rule would not alter the investment or employment decisions of firms or significantly adversely impact employment. The RIA also noted that the requirements would require the one-time installation or replacement of equipment and the ongoing implementation of a leak detection and repair program, both of which would require labor to comply.

We do not believe that the proposed rule would substantially alter the investment or employment decisions of firms for two reasons. First, the RIA for the 2016 final rule determined that that rule would not substantially alter the investment or employment decisions of firms, and so therefore delaying the 2016 final rule would likewise not be expected to impact those decisions. We also recognize that while there might be a small positive impact on investment and employment due to the reduction in compliance burdens, the magnitude of the reductions are relatively small.

Small Business Impacts

The BLM reviewed the Small Business Administration (SBA) size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau. We conclude that small

entities represent the overwhelming majority of entities operating in the onshore crude oil and natural gas extraction industry and, therefore, the proposed rule would impact a significant number of small entities.

To examine the economic impact of the rule on small entities, the BLM performed a screening analysis on a sample of potentially affected small entities, comparing the reduction of compliance costs to entity profit margins.

The BLM identified up to 1,828 entities that operate on Federal and Indian leases and recognizes that the overwhelming majority of these entities are small business, as defined by the SBA. We estimated the potential reduction in compliance costs to be about $60,000 per entity during the initial year when the requirements would be suspended or delayed. This represents the average maximum amount by which the operators would be positively impacted by the proposed rule.

We used existing BLM information and research concerning firms that have recently completed Federal and Indian wells and the financial and employment information on a sample of these firms, as available in company annual report filings with the Securities and Exchange Commission (SEC). From the original list of companies, we identified 55 company filings. Of those companies, 33 were small businesses.

From data in the companies' 10–K filings to the SEC, the BLM was able to calculate the companies' profit margins for the years 2012, 2013, and 2014. We then calculated a profit margin figure for each company when subject to the average annual reduction in compliance costs associated with this proposed rule. For these 26 small companies, the estimated per-entity reduction in compliance costs would result in an average increase in profit margin of 0.17 percentage points (based on the 2014 company data) (2017 RIA at 46).

Impacts Associated With Oil and Gas Operations on Tribal Lands

The proposed rule would apply to oil and gas operations on both Federal and Indian leases. In the RIA, the BLM estimates the impacts associated with operations on Indian leases, as well as royalty implications for tribal governments. We estimate these impacts by scaling down the total impacts by the share of oil wells on Indian lands and the share of gas wells on Indian Lands. Please reference the RIA at section 4.4.5 for a full explanation about the estimate impacts.

IV. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) will review all significant rules.

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

This proposed rule would temporarily suspend or delay portions of the BLM's 2016 final rule while the BLM reviews those requirements. We have developed this proposed rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563.

After reviewing the requirements of the proposed rule, the OMB has determined that it is an economically significant action according to the criteria of Executive Order 12866. The BLM reviewed the requirements of the proposed rule and determined that it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For more detailed information, see the RIA prepared for this proposed rule. The RIA has been posted in the docket for the proposed rule on the *Federal eRulemaking Portal: https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE54'' and click the ''Search'' button. Follow the instructions at this Web site.

Regulatory Flexibility Act

This proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Regulatory Flexibility Act (RFA) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601—612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The BLM concludes that the vast majority of entities operating in the relevant sectors are small businesses as defined by the SBA. As such, the proposed rule would likely affect a substantial number of small entities.

However, the BLM believes that the proposed rule would not have a significant economic impact on a substantial number of small entities. Although the rule would affect a substantial number of small entities, the BLM does not believe that these effects would be economically significant. The proposed rule would temporarily suspend or delay certain requirements placed on operators by the 2016 final rule. Operators would not have to undertake the associated compliance activities, either operational or administrative, that are outlined in the 2016 final rule until January 17, 2019, except to the extent the activities are required by State or tribal law, or by other pre-existing BLM regulations. The screening analysis conducted by the BLM estimates that the average reduction in compliance costs associated with this proposed rule would be a small fraction of a percent of the profit margin for small companies, which is not a large enough impact to be considered significant.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Would have an annual effect on the economy of $100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have a significant adverse effects on competition,

employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments, or the private sector of $100 million or more per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule contains no requirements that would apply to State, local, or tribal governments. It would temporarily suspend or delay requirements that would otherwise apply to the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is not required for the proposed rule. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (Executive Order 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. The proposed rule would temporarily suspend or delay many of the requirements placed on operators by the 2016 final rule. Operators would not have to undertake the associated compliance activities, either operational or administrative, that are outlined in the 2016 final rule until January 17, 2019, and therefore would impact some operational and administrative requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations. This proposed rule conforms to the terms of those leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

Federalism (Executive Order 13132)

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

The proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. It would not apply to States or local governments or State or local governmental entities. The rule would affect the relationship between operators, lessees, and the BLM, but it does not directly impact the States. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. More specifically, this proposed rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This proposed rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian tribes that would result from this proposed rule. Under this proposed rule, oil and gas operations on tribal and allotted lands would not be subject to many of the requirements placed on operators by the 2016 final rule until January 17, 2019.

The BLM believes that temporarily suspending or delaying these requirements would assist in preventing Indian lands from being viewed by oil and gas operators as less attractive than non-Indian lands due to unnecessary and burdensome compliance costs, thereby preventing economic harm to tribes and allottees.

The BLM is conducting tribal outreach which it believes is appropriate given that the proposed rule would extend the compliance dates of the 2016 final rule, but would not change the policies of that rule. The BLM notified tribes of the action and requested feedback and comment through the respective BLM State Office Directors. Future tribal consultation may occur on an ongoing basis.

Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. 44 U.S.C. 3512. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

OMB has approved the 24 information collection activities in the 2016 final rule and has assigned control number 1004–0211 to those activities. In the Notice of Action approving the 24 information collection activities in the 2016 final rule, OMB announced that the control number will expire on January 31, 2018. The Notice of Action also included terms of clearance.

The BLM requests the extension of control number 1004–0021 until January 31, 2019. The BLM requests no other changes to the control number.

In accordance with the PRA, the BLM is inviting public comment on the proposed extension of control no. 1004–0211. Descriptions of the information collection activities in this proposed rule, along with estimates of the annual burdens, are shown below. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the proposed information collection requirements.

The BLM has submitted the information collection request for this proposed rule to OMB for review in accordance with the PRA. You may obtain a copy of the request from the BLM by electronic mail request to James Tichenor at *jtichenor@blm.gov* or by telephone request to 202–573–0536.

You may also review the information collection request online at: *http://www.reginfo.gov/public/do/*.

The BLM requests comments on the following subjects:

- Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
- The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

If you want to comment on the information collection requirements of this proposed rule, please send your comments directly to OMB, with a copy to the BLM, as directed in the **ADDRESSES** section of this preamble. Please identify your comments with ''OMB Control Number 1004–0211.'' OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by November 6, 2017.

2. Summary of Information Collection Activities

Title: Waste Prevention, Production Subject to Royalties, and Resource Conservation (43 CFR parts 3160 and 3170). Form 3160–5, Sundry Notices and Reports on Wells.

OMB Control Number: 1004–0211.

Forms: Form 3160–3, Application for Permit to Drill or Re-enter; and Form 3160–5, Sundry Notices and Reports on Wells.

Description of Respondents: Holders of Federal and Indian (except Osage Tribe) oil and gas leases, those who belong to Federally approved units or communitized areas, and those who are parties to oil and gas agreements under the Indian Mineral Development Act, 25 U.S.C. 2101–2108.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Abstract: The BLM requests the extension of control number 1004–0021 until January 31, 2019. The BLM requests no changes to the control number except this extension.

Estimated Number of Responses: 63,200.

Estimated Total Annual Burden Hours: 82,170.

Estimated Total Non-Hour Cost: None.

3. Information Collection Request

The BLM requests extension of OMB control number 1004–0211 until January 31, 2019. This extension would continue OMB's approval of the following information collection activities.

Plan To Minimize Waste of Natural Gas (43 CFR 3162.3–1)

The 2016 final rule added a new provision to 43 CFR 3162.3–1 that requires a plan to minimize waste of natural gas when submitting an Application for Permit to Drill or Re-enter (APD) for a development oil well. This information is in addition to the APD information that the BLM already collects under OMB Control Number 1004–0137. The required elements of the waste minimization plan are listed at paragraphs (j)(1) through (j)(7).

Request for Approval for Royalty-Free Uses On-Lease or Off-Lease (43 CFR 3178.5, 3178.7, 3178.8, and 3178.9)

Section 3178.5 requires submission of a Sundry Notice (Form 3160–5) to request prior written BLM approval for use of gas royalty-free for the following operations and production purposes on the lease, unit or communitized area:

- Using oil or gas that an operator removes from the pipeline at a location downstream of the facility measurement point (FMP);
- Removal of gas initially from a lease, unit PA, or communitized area for treatment or processing because of particular physical characteristics of the gas, prior to use on the lease, unit PA or communitized area; and
- Any other type of use of produced oil or gas for operations and production purposes pursuant to § 3178.3 that is not identified in § 3178.4.

Section 3178.7 requires submission of a Sundry Notice (Form 3160–5) to request prior written BLM approval for off-lease royalty-free uses in the following circumstances:

- The equipment or facility in which the operation is conducted is located off the lease, unit, or communitized area for engineering, economic, resource-protection, or physical-accessibility reasons; and
- The operations are conducted upstream of the FMP.

Section 3178.8 requires that an operator measure or estimate the volume of royalty-free gas used in operations upstream of the FMP. In general, the operator is free to choose whether to measure or estimate, with the exception that the operator must in all cases measure the following volumes:

- Royalty-free gas removed downstream of the FMP and used pursuant to §§ 3178.4 through 3178.7; and
- Royalty-free oil used pursuant to §§ 3178.4 through 3178.7.

If oil is used on the lease, unit or communitized area, it is most likely to be removed from a storage tank on the lease, unit or communitized area. Thus, this regulation also requires the operator to document the removal of the oil from the tank or pipeline.

Section 3178.8(e) requires that operators use best available information to estimate gas volumes, where estimation is allowed. For both oil and gas, the operator must report the volumes measured or estimated, as applicable, under ONRR reporting requirements. As revisions to Onshore Oil and Gas Orders No. 4 and 5 have now been finalized as 43 CFR subparts 3174 and 3175, respectively, the final rule text now references § 3173.12, as well as § 3178.4 through § 3178.7 to clarify that royalty-free use must adhere to the provisions in those sections.

Section 3178.9 requires the following additional information in a request for prior approval of royalty-free use under § 3178.5, or for prior approval of off-lease royalty-free use under § 3178.7:

- A complete description of the operation to be conducted, including the location of all facilities and equipment involved in the operation and the location of the FMP;
- The volume of oil or gas that the operator expects will be used in the operation and the method of measuring or estimating that volume;
- If the volume expected to be used will be estimated, the basis for the estimate (*e.g.,* equipment manufacturer's published consumption or usage rates); and
- The proposed disposition of the oil or gas used (*e.g.,* whether gas used would be consumed as fuel, vented through use of a gas-activated pneumatic controller, returned to the reservoir, or disposed by some other method).

Request for Approval of Alternative Capture Requirement (43 CFR 3179.8)

Section 3179.8 applies only to leases issued before the effective date of the 2016 final rule and to operators choosing to comply with the capture requirement in § 3179.7 on a lease-by-lease, unit-by-unit, or communitized area-by-communitized area basis. The regulation provides that operators who

meet those parameters may seek BLM approval of a capture percentage other than that which is applicable under 43 CFR 3179.7. The operator must submit a Sundry Notice (Form 3160–5) that includes the following information:

- The name, number, and location of each of the operator's wells, and the number of the lease, unit, or communitized area with which it is associated; and
- The oil and gas production levels of each of the operator's wells on the lease, unit, or communitized area for the most recent production month for which information is available and the volumes being vented and flared from each well.

In addition, the request must include map(s) showing:

- The entire lease, unit, or communitized area, and the surrounding lands to a distance and on a scale that shows the field in which the well is or will be located (if applicable), and all pipelines that could transport the gas from the well;
- All of the operator's producing oil and gas wells, which are producing from Federal or Indian leases, (both on Federal or Indian leases and on other properties) within the map area;
- Identification of all of the operator's wells within the lease from which gas is flared or vented, and the location and distance of the nearest gas pipeline(s) to each such well, with an identification of those pipelines that are or could be available for connection and use; and
- Identification of all of the operator's wells within the lease from which gas is captured;

The following information is also required:

- Data that show pipeline capacity and the operator's projections of the cost associated with installation and operation of gas capture infrastructure, to the extent that the operator is able to obtain this information, as well as cost projections for alternative methods of transportation that do not require pipelines; and
- Projected costs of and the combined stream of revenues from both gas and oil production, including: (1) The operator's projections of gas prices, gas production volumes, gas quality (*i.e.,* heating value and H_2S content), revenues derived from gas production, and royalty payments on gas production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less; and (2) The operator's projections of oil prices, oil production volumes, costs, revenues, and royalty payments from the operator's oil and gas operations within the lease over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

Notification of Choice To Comply on County- or State-Wide Basis (43 CFR 3179.7(c)(3)(ii))

Section 3179.7 requires operators flaring gas from development oil wells to capture a specified percentage of the operator's adjusted volume of gas produced over the relevant area. The ''relevant area'' is each of the operator's leases, units, or communitized areas, unless the operator chooses to comply on a county- or State-wide basis and the operator notifies the BLM of its choice by Sundry Notice (Form 3160–5) by January 1 of the relevant year.

Request for Exemption From Well Completion Requirements (43 CFR 3179.102(c) and (d))

Section 3179.102 lists several requirements pertaining to gas that reaches the surface during well completion and related operations. An operator may seek an exemption from these requirements by submitting a Sundry Notice (Form 3160–5) that includes the following information:

(1) The name, number, and location of each of the operator's wells, and the number of the lease, unit, or communitized area with which it is associated;

(2) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;

(3) Data that show the costs of compliance; and

(4) Projected costs of and the combined stream of revenues from both gas and oil production, including: the operator's projections of oil and gas prices, production volumes, quality (*i.e.,* heating value and H_2S content), revenues derived from production, and royalty payments on production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

The rule also provides that an operator that is in compliance with the EPA regulations for well completions under 40 CFR part 60, subpart OOOO or subpart OOOOa is deemed in compliance with the requirements of this section. As a practical matter, all new, reconstructed, and modified hydraulically fracturing or refracturing events are now subject to the EPA requirements, so the BLM does not believe that the requirements of this section would have any independent effect, or that any operator would request an exemption from the requirements of this section, as long as the EPA requirements remain in effect. For this reason, the BLM is not estimating any PRA burdens for § 3179.102.[4]

Request for Extension of Royalty-Free Flaring During Initial Production Testing (43 CFR 3179.103)

Section 3179.103 allows gas to be flared royalty-free during initial production testing. The regulation lists specific volume and time limits for such testing. An operator may seek an extension of those limits on royalty-free flaring by submitting a Sundry Notice (Form 3160–5) to the BLM.

Request for Extension of Royalty-Free Flaring During Subsequent Well Testing (43 CFR 3179.104)

Section 3179.104 allows gas to be flared royalty-free for no more than 24 hours during well tests subsequent to the initial production test. The operator may seek authorization to flare royalty-free for a longer period by submitting a Sundry Notice (Form 3160–5) to the BLM.

Reporting of Venting or Flaring (43 CFR 3179.105)

Section 3179.105 allows an operator to flare gas royalty-free during a temporary, short-term, infrequent, and unavoidable emergency. Venting gas is permissible if flaring is not feasible during an emergency. The regulation defines limited circumstances that constitute an emergency, and other circumstances that do not constitute an emergency.

The operator must estimate and report to the BLM on a Sundry Notice (Form 3160–5) volumes flared or vented in circumstances that, as provided by 43 CFR 3179.105, do not constitute emergencies for the purposes of royalty assessment:

(1) More than 3 failures of the same component within a single piece of equipment within any 365-day period;

(2) The operator's failure to install appropriate equipment of a sufficient capacity to accommodate the production conditions;

(3) Failure to limit production when the production rate exceeds the capacity of the related equipment, pipeline, or gas plant, or exceeds sales contract volumes of oil or gas;

(4) Scheduled maintenance;

(5) A situation caused by operator negligence; or

[4] The EPA has convened a proceeding for reconsidering the final OOOOa rule, see 82 FR 25730 (June 5, 2017). If EPA's requirements are altered in any way in the future, then PRA burdens estimated for BLM's rule could increase by up to $130/event if the operator files for an exemption.

(6) A situation on a lease, unit, or communitized area that has already experienced 3 or more emergencies within the past 30 days, unless the BLM determines that the occurrence of more than 3 emergencies within the 30 day period could not have been anticipated and was beyond the operator's control.

Pneumatic Controllers—Introduction

Section 3179.201 pertains to any pneumatic controller that: (1) Is not subject to EPA regulations at 40 CFR 60.5360a through 60.5390a, but would be subject to those regulations if it were a new or modified source; and (2) has a continuous bleed rate greater than 6 standard cubic feet (scf) per hour. Section 3179.201(b) requires operators to replace each high-bleed pneumatic controller with a controller with a bleed rate lower than 6 scf per hour, with the following exceptions: (1) The pneumatic controller exhaust is routed to processing equipment; (2) the pneumatic controller exhaust was and continues to be routed to a flare device or low pressure combustor; (3) The pneumatic controller exhaust is routed to processing equipment; or (4) The operator notifies the BLM through a Sundry Notice and demonstrates, and the BLM agrees, that such would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

Notification of Functional Needs for a Pneumatic Controller (43 CFR 3179.201(b)(1)–(3))

An operator may invoke one of the first three exceptions described above by notifying the BLM through a Sundry Notice (Form 3160–5) that use of the pneumatic controller is required based on functional needs that may include, but are not limited to, response time, safety, and positive actuation, and the Sundry Notice (Form 3160–5) describes those functional needs.

Showing That Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves (43 CFR 3175.201(b)(4) and 3175.201(c))

An operator may invoke the fourth exception described above by demonstrating to the BLM through a Sundry Notice (Form 3160–5), and by obtaining the BLM's agreement, that replacement of a pneumatic controller would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease. The Sundry Notice (Form 3160–5) must include the following information:

(1) The name, number, and location of each of the operator's wells, and the number of the lease, unit, or communitized area with which it is associated;

(2) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;

(3) Data that show the costs of compliance;

(4) Projected costs of and the combined stream of revenues from both gas and oil production, including: the operator's projections of gas prices, gas production volumes, gas quality (*i.e.,* heating value and H_2S content), revenues derived from gas production, and royalty payments on gas production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less; and the operator's projections of oil prices, oil production volumes, costs, revenues, and royalty payments from the operator's oil and gas operations within the lease over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

Showing in Support of Replacement of Pneumatic Controller Within 3 Years (43 CFR 3179.201(d))

The operator may replace a high-bleed pneumatic controller if the operator notifies the BLM through a Sundry Notice (Form 3160–5) that the well or facility that the pneumatic controller serves has an estimated remaining productive life of 3 years or less.

Pneumatic Diaphragm Pumps—Introduction

With some exceptions, § 3179.202 pertains to any pneumatic diaphragm pump that: (1) Uses natural gas produced from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease; and (2) Is not subject to EPA regulations at 40 CFR 60.5360a through 60.5390a, but would be subject to those regulations if it were a new, reconstructed, or modified source as defined in 40 CFR part 60 subpart OOOOa. This regulation generally requires replacement of such a pump with a zero-emissions pump or routing of the pump's exhaust gas to processing equipment for capture and sale.

This requirement does not apply to pneumatic diaphragm pumps that do not vent exhaust gas to the atmosphere. In addition, this requirement does not apply if the operator submits a Sundry Notice to the BLM documenting that the pump(s) operated on less than 90 individual days in the prior calendar year.

Showing That a Pneumatic Diaphragm Pump Was Operated on Fewer Than 90 Individual Days in the Prior Calendar Year (43 CFR 3179.202(b)(2))

A pneumatic diaphragm pump is not subject to § 3179.202 if the operator documents in a Sundry Notice (Form 3160–5) that the pump was operated fewer than 90 days in the prior calendar year.

Notification of Functional Needs for a Pneumatic Diaphragm Pump (43 CFR 3179.202(d))

In lieu of replacing a pneumatic diaphragm pump or routing the pump exhaust gas to processing equipment, an operator may submit a Sundry Notice (Form 3160–5) to the BLM showing that replacing the pump with a zero emissions pump is not viable because a pneumatic pump is necessary to perform the function required, and that routing the pump exhaust gas to processing equipment for capture and sale is technically infeasible or unduly costly.

Showing That Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves (43 CFR 3175.202(f) and (g))

An operator may seek an exemption from the replacement requirement by submitting a Sundry Notice (Form 3160–5) to the BLM that provides an economic analysis that demonstrates that compliance with these requirements would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease. The Sundry Notice (Form 3160–5) must include the following information:

(1) Well information that must include: (i) The name, number, and location of each well, and the number of the lease, unit, or communitized area with which it is associated; and (ii) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;

(2) Data that show the costs of compliance with § 3179.202(c) through (e); and

(3) The operator's estimate of the costs and revenues of the combined stream of revenues from both the gas and oil components, including: (i) The operator's projections of gas prices, gas production volumes, gas quality (*i.e.,* heating value and H_2S content), revenues derived from gas production, and royalty payments on gas production

over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less; and (ii) The operator's projections of oil prices, oil production volumes, costs, revenues, and royalty payments from the operator's oil and gas operations within the lease over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

Showing in Support of Replacement of Pneumatic Diaphragm Pump Within 3 Years (43 CFR 3179.202(h))

The operator may replace a pneumatic diaphragm pump if the operator notifies the BLM through a Sundry Notice (Form 3160–5) that the well or facility that the pneumatic controller serves has an estimated remaining productive life of 3 years or less.

Storage Vessels (43 CFR 3179.203(c) and (d))

A storage vessel is subject to 43 CFR 3179.203(c) if the vessel: (1) Contains production from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease; and (2) Is not subject to any of the requirements of EPA regulations at 40 CFR part 60, subpart OOOO, but would be subject to that subpart if it were a new, reconstructed, or modified source.

The operator must determine, record, and make available to the BLM upon request, whether the storage vessel has the potential for VOC emissions equal to or greater than 6 tpy based on the maximum average daily throughput for a 30-day period of production. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, State, local or tribal authority that limit the VOC emissions to less than 6 tpy.

If a storage vessel has the potential for VOC emissions equal to or greater than 6 tpy, the operator must replace the storage vessel at issue in order to comply with the requirements of this section, and the operator must

(1) Route all tank vapor gas from the storage vessel to a sales line;

(2) If the operator determines that compliance with the requirement to route all tank vapor gas from the storage vessel to a sales line is technically infeasible or unduly costly, route all tank vapor gas from the storage vessel to a device or method that ensures continuous combustion of the tank vapor gas; or

(3) Submit an economic analysis to the BLM through a Sundry Notice (Form 3160–5) that demonstrates, and the BLM agrees, that compliance with § 3179.203(c)(2) would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

To support the demonstration described above, the operator must submit a Sundry Notice (Form 3160–5) that includes the following information:

(1) The name, number, and location of each well, and the number of the lease, unit, or communitized area with which it is associated;

(2) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;

(3) Data that show the costs of compliance with § 3179.203(c)(1) or (2) on the lease; and

(4) The operator must consider the costs and revenues of the combined stream of revenues from both the gas and oil components, including: The operator's projections of oil and gas prices, production volumes, quality (*i.e.,* heating value and H_2S content), revenues derived from production, and royalty payments on production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

Downhole Well Maintenance and Liquids Unloading—Documentation and Reporting (43 CFR 3179.204(c) and (e))

The operator must minimize vented gas and the need for well venting associated with downhole well maintenance and liquids unloading, consistent with safe operations. Before the operator manually purges a well for liquids unloading for the first time after the effective date of this section, the operator must consider other methods for liquids unloading and determine that they are technically infeasible or unduly costly. The operator must provide information supporting that determination as part of a Sundry Notice (Form 3160–5). This requirement applies to each well the operator operates.

For any liquids unloading by manual well purging, the operator must:

(1) Ensure that the person conducting the well purging remains present on-site throughout the event to minimize to the maximum extent practicable any venting to the atmosphere;

(2) Record the cause, date, time, duration, and estimated volume of each venting event; and

(3) Maintain the records for the period required under § 3162.4–1 and make them available to the BLM, upon request.

Downhole Well Maintenance and Liquids Unloading—Notification of Excessive Duration or Volume (43 CFR 3179.204(f))

The operator must notify the BLM by Sundry Notice (Form 3160–5), within 30 calendar days, if:

(1) The cumulative duration of manual well purging events for a well exceeds 24 hours during any production month; or

(2) The estimated volume of gas vented in liquids unloading by manual well purging operations for a well exceeds 75 Mcf during any production month.

Leak Detection—Compliance With EPA Regulations (43 CFR 3179.301(j))

Sections 3179.301 through 3179.305 include information collection activities pertaining to the detection and repair of gas leaks during production operations. These regulations require operators to inspect all equipment covered under § 3179.301(a) for gas leaks.

Section 3179.301(j) allows an operator to satisfy the requirements of §§ 3179.301 through 3179.305 for some or all of the equipment or facilities on a given lease by notifying the BLM in a Sundry Notice (Form 3160–5) that the operator is complying with EPA requirements established pursuant to 40 CFR part 60 with respect to such equipment or facilities.

Leak Detection—Request To Use an Alternative Monitoring Device and Protocol (43 CFR 3179.302(c))

Section 3175.302 specifies the instruments and methods that an operator may use to detect leaks. Section 3175.302(d) allows the BLM to approve an alternative monitoring device and associated inspection protocol if the BLM finds that the alternative would achieve equal or greater reduction of gas lost through leaks compared with the approach specified in § 3179.302(a)(1) when used according to § 3179.303(a).

Any person may request approval of an alternative monitoring device and protocol by submitting a Sundry Notice (Form 3160–5) to BLM that includes the following information: (1) Specifications of the proposed monitoring device, including a detection limit capable of supporting the desired function; (2) The proposed monitoring protocol using the proposed monitoring device, including how results will be recorded; (3) Records and data from laboratory and field testing, including but not limited to performance testing; (4) A demonstration that the proposed monitoring device and protocol will

achieve equal or greater reduction of gas lost through leaks compared with the approach specified in the regulations; (5) Tracking and documentation procedures; and (6) Proposed limitations on the types of sites or other conditions on deploying the device and the protocol to achieve the demonstrated results.

Leak Detection—Operator Request To Use an Alternative Leak Detection Program (43 CFR 3179.303(b))

Section 3179.303(b) allows an operator to submit a Sundry Notice (Form 3160–5) requesting authorization to detect gas leaks using an alternative instrument-based leak detection program, different from the specified requirement to inspect each site semi-annually using an approved monitoring device.

To obtain approval for an alternative leak detection program, the operator must submit a Sundry Notice (Form 3160–5) that includes the following information:

(1) A detailed description of the alternative leak detection program, including how it will use one or more of the instruments specified in or approved under § 3179.302(a) and an identification of the specific instruments, methods and/or practices that would substitute for specific elements of the approach specified in §§ 3179.302(a) and 3179.303(a);

(2) The proposed monitoring protocol;

(3) Records and data from laboratory and field testing, including, but not limited to, performance testing, to the extent relevant;

(4) A demonstration that the proposed alternative leak detection program will achieve equal or greater reduction of gas lost through leaks compared to compliance with the requirements specified in §§ 3179.302(a) and 3179.303(a);

(5) A detailed description of how the operator will track and document its procedures, leaks found, and leaks repaired; and

(6) Proposed limitations on types of sites or other conditions on deployment of the alternative leak detection program.

Leak Detection—Operator Request for Exemption Allowing Use of an Alternative Leak-Detection Program That Does Not Meet Specified Criteria (43 CFR 3179.303(d))

An operator may seek authorization for an alternative leak detection program that does not achieve equal or greater reduction of gas lost through leaks compared to the required approach, if the operator demonstrates that compliance with the leak-detection regulations (including the option for an alternative program under 43 CFR 3179.303(b)) would impose such costs as to cause the operator to cease production and abandon significant recoverable oil or gas reserves under the lease. The BLM may approve an alternative leak detection program that does not achieve equal or greater reduction of gas lost through leaks, but is as effective as possible consistent with not causing the operator to cease production and abandon significant recoverable oil or gas reserves under the lease.

To obtain approval for an alternative program under this provision, the operator must submit a Sundry Notice (Form 3160–5) that includes the following information:

(1) The name, number, and location of each well, and the number of the lease, unit, or communitized area with which it is associated;

(2) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;

(3) Data that show the costs of compliance on the lease with the requirements of §§ 3179.301–305 and with an alternative leak detection program that meets the requirements of § 3179.303(b);

(4) The operator must consider the costs and revenues of the combined stream of revenues from both the gas and oil components and provide the operator's projections of oil and gas prices, production volumes, quality (*i.e.,* heating value and H_2S content), revenues derived from production, and royalty payments on production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less;

(5) The information required to obtain approval of an alternative program under § 3179.303(b), except that the estimated volume of gas that will be lost through leaks under the alternative program must be compared to the volume of gas lost under the required program, but does not have to be shown to be at least equivalent.

Leak Detection—Notification of Delay in Repairing Leaks (43 CFR 3179.304(b))

Section 3179.304(a) requires an operator to repair any leak no later than 30 calendar days after discovery of the leak, unless there is good cause for delay in repair. If there is good cause for a delay beyond 30 calendar days, § 3179.304(b) requires the operator to submit a Sundry Notice (Form 3160–5) notifying the BLM of the cause.

Leak Detection—Inspection Recordkeeping and Reporting (43 CFR 3179.305)

Section 3179.305 requires operators to maintain the following records and make them available to the BLM upon request: (1) For each inspection required under § 3179.303, documentation of the date of the inspection and the site where the inspection was conducted; (2) The monitoring method(s) used to determine the presence of leaks; (3) A list of leak components on which leaks were found; (4) The date each leak was repaired; and (5) The date and result of the follow-up inspection(s) required under § 3179.304. By March 31 each calendar year, the operator must provide to the BLM an annual summary report on the previous year's inspection activities that includes: (1) The number of sites inspected; (2) The total number of leaks identified, categorized by the type of component; (3) The total number of leaks repaired; (4) The total number of leaks that were not repaired as of December 31 of the previous calendar year due to good cause and an estimated date of repair for each leak; and (5) A certification by a responsible officer that the information in the report is true and accurate.

Leak Detection—Annual Reporting of Inspections (43 CFR 3179.305(b))

By March 31 of each calendar year, the operator must provide to the BLM an annual summary report on the previous year's inspection activities that includes:

(1) The number of sites inspected;

(2) The total number of leaks identified, categorized by the type of component;

(3) The total number of leaks repaired;

(4) The total number leaks that were not repaired as of December 31 of the previous calendar year due to good cause and an estimated date of repair for each leak.

(5) A certification by a responsible officer that the information in the report is true and accurate to the best of the officer's knowledge.

4. Burden Estimates

The following table details the annual estimated hour burdens for the information activities described above.

Type of response	Number of responses	Hours per response	Total hours (Column B × Column C)
A	B	C	D
Plan to Minimize Waste of Natural Gas, 43 CFR 3162.3–1, Form 3160–3	2,000	8	16,000
Request for Approval for Royalty-Free Uses On-Lease or Off-Lease, 43 CFR 3178.5, 3178.7, 3178.8, and 3178.9, Form 3160–5	50	4	200
Notification of Choice to Comply on County- or State-wide Basis, 43 CFR 3179.7(c)(3)(iii)	200	1	200
Request for Approval of Alternative Capture Requirement, 43 CFR 3179.8(b), Form 3160–5	50	16	800
Request for Exemption from Well Completion Requirements, 43 CFR 3179.102(c) and (d), Form 3160–5	0	0	0
Request for Extension of Royalty-Free Flaring During Initial Production Testing, 43 CFR 3179.103, Form 3160–5	500	2	1,000
Request for Extension of Royalty-Free Flaring During Subsequent Well Testing, 43 CFR 3179.104, Form 3160–5	5	2	10
Reporting of Venting or Flaring, 43 CFR 3179.105, Form 3160–5	250	2	500
Notification of Functional Needs for a Pneumatic Controller, 43 CFR 3179.201(b)(1)–(3), Form 3160–5	10	2	20
Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves, 43 CFR 3175.201(b)(4) and 3175.201(c), Form 3160–5	50	4	200
Showing in Support of Replacement of Pneumatic Controller within 3 Years, 43 CFR 3179.201(d), Form 3160–5	100	1	100
Showing that a Pneumatic Diaphragm Pump was Operated on Fewer than 90 Individual Days in the Prior Calendar Year, 43 CFR 3179.202(b)(2), Form 3160–5	100	1	100
Notification of Functional Needs for a Pneumatic Diaphragm Pump, 43 CFR 3179.202(d), Form 3160–5	150	1	150
Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves, 43 CFR 3175.202(f) and (g), Form 3160–5	10	4	40
Showing in Support of Replacement of Pneumatic Diaphragm Pump within 3 Years, 43 CFR 3179.202(h), Form 3160–5	100	1	100
Storage Vessels, 43 CFR 3179.203(c), Form 3160–5	50	4	200
Downhole Well Maintenance and Liquids Unloading—Documentation and Reporting, 43 CFR 3179.204(c) and (e), Form 3160–5	5,000	1	5,000
Downhole Well Maintenance and Liquids Unloading—Notification of Excessive Duration or Volume, 43 CFR 3179.204(f), Form 3160–5	250	1	250
Leak Detection—Compliance with EPA Regulations, 43 CFR 3179.301(j), Form 3160–5	50	4	200
Leak Detection—Request to Use an Alternative Monitoring Device and Protocol, 43 CFR 3179.302(c), Form 3160–5	5	40	200
Leak Detection—Operator Request to Use an Alternative Leak Detection Program, 43 CFR 3179.303(b), Form 3160–5	20	40	800
Leak Detection—Operator Request for Exemption Allowing Use of an Alternative Leak-Detection Program that Does Not Meet Specified 43 CFR 3179.303(d), Form 3160–5	150	20	3,000
Leak Detection—Notification of Delay in Repairing Leaks, 43 CFR 3179.304(a), Form 3160–5	100	1	100
Leak Detection—Inspection Recordkeeping and Reporting, 43 CFR 3179.305	52,000	.25	13,000
Leak Detection—Annual Reporting of Inspections, 43 CFR 3179.305(b), Form 3160–5	2,000	20	40,000
Totals	63,200		82,170

National Environmental Policy Act

The BLM has prepared a draft environmental assessment (EA) to determine whether this proposed rule would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). If the final EA supports the issuance of a Finding of No Significant Impact (FONSI) for the rule, the preparation of an environmental impact statement pursuant to the NEPA would not be required.

The draft EA and FONSI have been placed in the file for the BLM's Administrative Record for the rule at the address specified in the **ADDRESSES** section. The EA and FONSI have also been posted in the docket for the rule on the *Federal eRulemaking Portal: https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE54'' and click the ''Search'' button. Follow the instructions at this Web site. The BLM invites the public to review these documents and suggests that anyone wishing to submit comments on the EA and FONSI should do so in accordance with the instructions contained in the ''Public Comment Procedures'' section above.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

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

Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of rulemaking, and notices of rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) Is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) That is designated by the Administrator of [OIRA] as a significant energy action.''

The rule temporarily suspends or delays certain requirements in the 2016 final rule and would reduce compliance costs in the short-term. The BLM determined that the 2016 final rule would not have impacted the supply, distribution, or use of energy and so the suspension or delay of many of the 2016 final rule's requirements until January

17, 2019, will likewise not have an impact on the supply, distribution, or use of energy. As such, we do not consider the proposed rule to be a ''significant energy action'' as defined in Executive Order 13211.

Clarity of This Regulation (Executive Orders 12866)

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

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

Authors

The principal authors of this proposed rule are: James Tichenor and Michael Riches of the BLM Washington Office; Sheila Mallory of the BLM New Mexico State Office, Eric Jones of the BLM Moab, Utah Field Office; David Mankiewicz of the BLM Farmington, New Mexico Field Office; and Beth Poindexter of the BLM Dickinson, North Dakota Field Office; assisted by Faith Bremner of the BLM's Division of Regulatory Affairs and by the Department of the Interior's Office of the Solicitor.

List of Subjects

43 CFR Part 3160

Administrative practice and procedure; Government contracts; Indians—lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3170

Administrative practice and procedure; Flaring; Government contracts; Incorporation by reference; Indians—lands; Mineral royalties; Immediate assessments; Oil and gas exploration; Oil and gas measurement; Public lands—mineral resources; Reporting and record keeping requirements; Royalty-free use; Venting.

Dated: September 28, 2017.

Katharine S. MacGregor,

Acting Assistant Secretary for Land and Minerals Management.

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR parts 3160 and 3170 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 2. Amend § 3162.3–1 by revising paragraph (j) introductory text to read as follows:

§ 3162.3–1 Drilling applications and plans.

* * * * *

(j) Beginning January 17, 2019, when submitting an Application for Permit to Drill an oil well, the operator must also submit a plan to minimize waste of natural gas from that well. The waste minimization plan must accompany, but would not be part of, the Application for Permit to Drill. The waste minimization plan must set forth a strategy for how the operator will comply with the requirements of 43 CFR subpart 3179 regarding control of waste from venting and flaring, and must explain how the operator plans to capture associated gas upon the start of oil production, or as soon thereafter as reasonably possible, including an explanation of why any delay in capture of the associated gas would be required. Failure to submit a complete and adequate waste minimization plan is grounds for denying or disapproving an Application for Permit to Drill. The waste minimization plan must include the following information:

* * * * *

PART 3170—ONSHORE OIL AND GAS PRODUCTION

■ 3. The authority citation for part 3170 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 4. Amend § 3179.7 by revising paragraphs (b) and (c) to read as follows:

§ 3179.7 Gas capture requirement.

* * * * *

(b) Beginning January 17, 2019, the operator's capture percentage must equal:

(1) For each month during the period from January 17, 2019, to December 31, 2020: 85 percent;

(2) For each month during the period from January 1, 2021, to December 31, 2023: 90 percent;

(3) For each month during the period from January 1, 2024, to December 31, 2026: 95 percent; and

(4) For each month beginning January 1, 2027: 98 percent.

(c) The term ''capture percentage'' in this section means the ''total volume of gas captured'' over the ''relevant area'' divided by the ''adjusted total volume of gas produced'' over the ''relevant area.''

(1) The term ''total volume of gas captured'' in this section means: For each month, the volume of gas sold from all of the operator's development oil wells in the relevant area plus the volume of gas from such wells used on lease, unit, or communitized area in the relevant area.

(2) The term ''adjusted total volume of gas produced'' in this section means: The total volume of gas captured over the month *plus* the total volume of gas flared over the month from high pressure flares from all of the operator's development oil wells that are in production in the relevant area, *minus:*

(i) For each month from January 17, 2019, to December 31, 2019: 5,400 Mcf times the total number of development oil wells ''in production'' in the relevant area;

(ii) For each month from January 1, 2020, to December 31, 2020: 3,600 Mcf times the total number of development oil wells in production in the relevant area;

(iii) For each month from January 1, 2021, to December 31, 2021: 1,800 Mcf times the total number of development oil wells in production in the relevant area; and

(iv) For each month from January 1, 2022, to December 31, 2022: 1,500 Mcf times the total number of development oil wells in production in the relevant area;

(v) For each month from January 1, 2023, to December 31, 2024: 1,200 Mcf times the total number of development oil wells in production in the relevant area;

(vi) For each month from January 1, 2025, to December 31, 2025: 900 Mcf times the total number of development oil wells in production in the relevant area; and

(vii) For each month after January 1, 2026: 750 Mcf times the total number of development.

* * * * *

■ 5. Amend § 3179.9 by revising paragraph (b)(1) introductory text to read as follows:

§ 3179.9 Measuring and reporting volumes of gas vented and flared.

* * * * *

(b) * * *

(1) If the operator estimates that the volume of gas flared from a high pressure flare stack or manifold equals or exceeds an average of 50 Mcf per day for the life of the flare, or the previous 12 months, whichever is shorter, then, beginning January 17, 2019, the operator must either:

* * * * *

■ 6. Amend § 3179.10 by revising paragraph (a) to read as follows:

§ 3179.10 Determinations regarding royalty-free flaring.

(a) Approvals to flare royalty free, which are in effect as of January 17, 2017, will continue in effect until January 17, 2019.

* * * * *

■ 7. Amend § 3179.101 by adding paragraph (c) to read as follows:

§ 3179.101 Well drilling.

* * * * *

(c) The operator must comply with this section beginning January 17, 2019.

■ 8. Amend § 3179.102 by adding paragraph (e) to read as follows:

§ 3179.102 Well completion and related operations.

* * * * *

(e) The operator must comply with this section beginning January 17, 2019.

■ 9. Amend § 3179.201 by revising paragraph (d) to read as follows:

§ 3179.201 Equipment requirements for pneumatic controllers.

* * * * *

(d) The operator must replace the pneumatic controller(s) by January 17, 2019, as required under paragraph (b) of this section. If, however, the well or facility that the pneumatic controller serves has an estimated remaining productive life of 3 years or less from January 17, 2017, then the operator may notify the BLM through a Sundry Notice and replace the pneumatic controller no later than 3 years from January 17, 2017.

* * * * *

■ 10. Amend § 3179.202 by revising paragraph (h) to read as follows:

§ 3179.202 Requirements for pneumatic diaphragm pumps.

* * * * *

(h) The operator must replace the pneumatic diaphragm pump(s) or route the exhaust gas to capture or to a flare or combustion device by January 17, 2019, except that if the operator will comply with paragraph (c) of this section by replacing the pneumatic diaphragm pump with a zero-emission pump and the well or facility that the pneumatic diaphragm pump serves has an estimated remaining productive life of 3 years or less from January 17, 2017, the operator must notify the BLM through a Sundry Notice and replace the pneumatic diaphragm pump no later than 3 years from January 17, 2017.

* * * * *

■ 11. Amend § 3179.203 by revising paragraph (b) and paragraph (c) introductory text to read as follows:

§ 3179.203 Storage vessels.

* * * * *

(b) Beginning January 17, 2019, and within 30 days after any new source of production is added to the storage vessel after January 17, 2019, the operator must determine, record, and make available to the BLM upon request, whether the storage vessel has the potential for VOC emissions equal to or greater than 6 tpy based on the maximum average daily throughput for a 30-day period of production. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, State, local or tribal authority that limit the VOC emissions to less than 6 tpy.

(c) If a storage vessel has the potential for VOC emissions equal to or greater than 6 tpy under paragraph (b) of this section, by January 17, 2019, or by January 17, 2020, if the operator must and will replace the storage vessel at issue in order to comply with the requirements of this section, the operator must:

* * * * *

■ 12. Amend § 3179.204 by adding paragraph (i) to read as follows:

§ 3179.204 Downhole well maintenance and liquids unloading.

* * * * *

(i) The operator must comply with this section beginning January 17, 2019.

■ 13. Amend § 3179.301 by revising paragraph (f) to read as follows:

§ 3179.301 Operator responsibility.

* * * * *

(f) The operator must make the first inspection of each site:

(1) By January 17, 2019, for all existing sites;

(2) Within 60 days of beginning production for new sites that begin production after January 17, 2019; and

(3) Within 60 days of the date when an existing site that was out of service is brought back into service and re-pressurized after January 17, 2019.

* * * * *

[FR Doc. 2017–21294 Filed 10–4–17; 8:45 am]

BILLING CODE 4310–84–P

Notices

Federal Register
Vol. 82, No. 192
Thursday, October 5, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that an orientation and planning meeting of the South Dakota Advisory Committee to the Commission will convene at 2:00 p.m. (MDT) on Friday, October 6, 2017, via teleconference. The purpose of the meeting is to discuss next steps after the subtle racism briefing in March 2017.

DATES: Friday, October 6, 2017, at 2:00 p.m. (MDT)

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number: 1–800–289–0548, Conference ID: 9222878.

TDD: Dial Federal Relay Service 1–800–977–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: David Mussatt, DFO, *dmussatt@usccr.gov,* 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–800–289–0548; Conference ID: 9222878. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–977–8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1–800–289–0548, Conference ID: 9222878. Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, November 6, 2017. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=274* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

- Welcome and Roll-call
- Brief update on Commission and Regional Activities
- Discuss next steps after briefing held in Aberdeen, SD, on March 24, 2017
  Dr. Richard Braunstein, Chair, South Dakota Advisory Committee
- Discuss Transcript, Sample Advisory Memorandums, Yankton Sioux Tribe Chairman testimony
- Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance that an administrative error caused the previous week's noticed meeting to be cancelled and rescheduled for the current date.

Dated: October 2, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–21450 Filed 10–4–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–41–2017]

Foreign-Trade Zone (FTZ) 283—West Tennessee Area; Authorization of Production Activity; MTD Consumer Group Inc.; Subzone 283A; (Landscaping Equipment and Off-Road Utility Vehicles); Martin, Tennessee

On June 1, 2017, MTD Consumer Group Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 283A, in Martin, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 27796, June 19, 2017). On September 29, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: October 2, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–21467 Filed 10–4–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Shantia Hassanshahi, a/k/a Shantia Hassan Shahi, a/k/a Shahi, a/k/a Shantia Haas, a/k/a Sean Haas, Inmate Number: 65586–112, USP Lompoc, U.S. Penitentiary, 3901 Klein Blvd., Lompoc, CA 93436.

On December 12, 2016, in the U.S. District Court for the District of Columbia, Shantia Hassanshahi, a/k/a Shantia Hassan Shahi, a/k/a Shahi, a/k/a Shantia Haas, a/k/a Sean Haas (''Hassanshahi'') was convicted of

violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). Specifically, Hassanshahi was convicted of willfully conspiring to export and cause the exportation of goods and technology from Canada to Iran, as well as services related thereto from the United States to Iran, without having first obtained the required license from the U.S. Department of the Treasury's Office of Foreign Assets Control. Hassanshahi was sentenced to 12 months in prison, one year of supervised release, 100 hours of community service, and a $100 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act], the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued pursuant to the Export Administration Act (''EAA'' or ''the Act''), or pursuant to the Regulations, in which the person had an interest at the time of his/her conviction.

BIS has received notice of Hassanshahi's conviction for violating the IEEPA, and has provided notice and an opportunity for Hassanshahi to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Hassanshahi.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Hassanshahi's export privileges under the Regulations for a period of five (5) years from the date of Hassanshahi's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Hassanshahi had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered:*

First, from the date of this Order until December 12, 2021, Shantia Hassanshahi, a/k/a Shantia Hassan Shahi, a/k/a Shahi, a/k/a Shantia Haas, a/k/a Sean Haas, with a last known address of Inmate Number: 65586–112, USP Lompoc, U.S. Penitentiary, 3901 Klein Blvd., Lompoc, CA 93436, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Hassanshahi by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Hassanshahi may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Hassanshahi, and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until December 12, 2021.

Issued this 28th day of September, 2017.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2017–21474 Filed 10–4–17; 8:45 am]

BILLING CODE P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2017). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)) (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Shehzad John, Currently Incarcerated at: Inmate Number: 91045–054, FCI Ashland, Federal Correctional Institution, P.O. Box 6001, Ashland, KY 41105, and With an Address at: 207 Border Street, Columbus, OH 43207

Order Denying Export Privileges

On August 1, 2016, in the U.S. District Court for the Southern District of New York, Shehzad John was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). Specifically, Shehzad John was convicted of willfully and knowingly exporting and attempting to export from the United States to Pakistan items on the Commerce Control List, namely, a Bushnell Optical scope, a Monstrum Laser Aimer, an AR 15 30mm red dot sight, and a NcStar red laser sight, without the required Department of Commerce licenses. Shehzad John was sentenced to 71 months in prison, three years of supervised release, a fine of $10,000, and an assessment of $100.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act], the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued pursuant to the Export Administration Act (''EAA'' or ''the Act'') or the Regulations in which the person had an interest at the time of his/her conviction.

BIS has received notice of Shehzad John's conviction for violating IEEPA and has provided notice and an opportunity for Shehzad John to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Shehzad John.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Shehzad John's export privileges under the Regulations for a period of 10 years from the date of Shehzad John's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Shehzad John had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

First, from the date of this Order until August 1, 2026, Shehzad John, currently incarcerated at: Inmate Number: 91045–054, FCI Ashland, Federal Correctional Institution, P.O. Box 6001, Ashland, KY 41105, and with a last known address of 207 Border Street, Columbus, OH 43207, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Shehzad John by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Shehzad John may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Shehzad John, and shall be published in the **Federal Register**.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2017). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)) (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

Sixth, this Order is effective immediately and shall remain in effect until August 1, 2026.

Issued this 28th day of September, 2017.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2017–21472 Filed 10–4–17; 8:45 am]

BILLING CODE –P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Tayabi Fazal Hussain, Lathifa Tower, Apt #1107, Al Nahda 1, Dubai, UAE

Order Denying Export Privileges

On October 3, 2016, in the U.S. District Court for the Northern District of Illinois, Tayabi Fazal Hussain (''Hussain'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). Specifically, Hussain knowingly and willfully conspired to export and caused the export of numerous types of goods, including, inter alia, optical and telescopic equipment and several sets of gas turbine mobile generators, from the United States to Iran, without having obtained the required U.S. Government authorization. Hussain was sentenced to 15 months in prison, with credit for time served, and a special assessment of $100.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued pursuant to the Export Administration Act (''EAA'' or ''the Act''), or pursuant to the Regulations, in which the person had an interest at the time of his/her conviction.

BIS has received notice of Hussain's conviction for violating the IEEPA, and has provided notice and an opportunity for Hussain to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Hussain.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Hussain's export privileges under the Regulations for a period of 10 years from the date of Hussain's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Hussain had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

First, from the date of this Order until October 3, 2026, Tayabi Fazal Hussain, with a last known address of Lathifa Tower, Apt # 1107, Al Nahda 1, Dubai, UAE, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Hussain by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Hussain may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2017). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)) (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Hussain, and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 3, 2026.

Issued this 28th day of September, 2017.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2017–21476 Filed 10–4–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Mark Henry (a/k/a Weida Zheng, a/k/a Scott Russel, a/k/a Bob Wilson, a/k/a Joanna Zhong), Inmate Number: 75602–053, FCI Schuylkill, Federal Correctional Institution, Satellite Camp, P.O. Box 670, Minersville, PA 17954; Respondent; Dahua Electronics Corporation (a/k/a Bao An Corporation), 134–12 59th Avenue, Flushing, NY 11355, Related Person Order Denying Privileges

A. Denial of Export Privileges of Mark Henry, a/k/a Weida Zheng, a/k/a Scott Russel, a/k/a Bob Wilson, a/k/a Joanna Zhong

On November 19, 2015, in the U.S. District Court for the Eastern District of New York, Mark Henry, a/k/a Weida Zheng, a/k/a Scott Russel, a/k/a Bob Wilson, a/k/a Joanna Zhong (''Henry''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Henry was convicted of willfully and knowingly exporting, causing to be exported, and attempting to export from the United States to Taiwan defense articles listed on the United States Munitions List, specifically, ablative materials for use, among other things, as a protective coating for rocket nozzles, without the required State Department license. Henry was sentenced to 78 months in prison for violating Sections 38(b)(2) and (c) of the AECA, along with three years of supervised release and a $200 assessment.[1]

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act of 1979], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to ten (10) years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security (''BIS'')'s Office of Exporter Services may revoke any BIS licenses previously issued pursuant to the EAA or the Regulations in which the person had an interest at the time of his/her conviction.

BIS received notice of Henry's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for Henry to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Henry. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Henry's export privileges under the Regulations for a period of ten (10) years from the date of Henry's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Henry had an interest at the time of his conviction.

B. Denial of Export Privileges of Related Person Dahua Electronics Corporation, a/k/a Bao An Corporation

Section 766.25(h) of the Regulations provides that the Director of BIS's Office of Exporter Services, in consultation with the Director of BIS's Office of Export Enforcement, may take action in accordance with Section 766.23 of the Regulations to make applicable to related persons a denial order that is being sought or has issued under Section 766.25. Section 766.23 provides, in turn, that in order to prevent evasion of a denial order issued pursuant to Part 766 of the Regulations, including pursuant to Section 766.25, the denial order made be made applicable not only to the respondent, but also to other persons related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.

As provided in Section 766.23, BIS gave notice to Dahua Electronics Corporation a/k/a Bao An Corporation (''Dahua'') that it intended to deny Mark Henry's export privileges pursuant to Section 766.25 for a period of up to ten (10) years from the date of his conviction and intended to make that denial order applicable to Dahua pursuant to Sections 766.25 and 766.23.[2] BIS also provided notice that it has reason to believe that Dahua is related to Henry as set forth in Section 766.23, that is, by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and reason to believe that naming Dahua as a person related to Henry would be necessary to prevent evasion of a denial order imposed against Henry. BIS gave Dahua an opportunity to oppose its addition as a related party by informing Dahua that it could make a written submission describing why Dahua is not related to Henry or why a denial order against Henry should not be applied to Dahua.

Having received no submission from or on behalf of Dahua, I have decided, following consultations with BIS's Office of Export Enforcement, including its Director, to name Dahua as a Related Person and make this Denial Order applicable to Dahua, thereby denying its export privileges for ten (10) years from the date of Henry's conviction, that is, until November 19, 2025. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Dahua had an interest at the time of Henry's conviction.

[1] Henry also was convicted of a second count, specifically, conspiracy in violation of 18 U.S.C. Section 371. He was sentenced on this count to 60 months in prison and three years of supervision release. His sentence on this count runs concurrently with his sentence, disused in the text above, for violating Section 38 of the AECA.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2017). The Regulations issued pursuant to the Export Administration Act of 1979 (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)) (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

[2] BIS provided notice to Dahua via Henry.

Dahua was incorporated in New York State, and remains listed there as an active corporation. Henry, a naturalized U.S. citizen born in China, operated Dahua out of his residence in Flushing, New York, and is believed to own Dahua. He used Dahua to purchase various items from companies located in the United States, including tools, machine parts, materials used in machinery, and industrial chemicals, for export to end users or customers located in Asia, including China and Taiwan. Operating through Dahua, Henry received requests for products from customers located overseas and solicited orders for those products from suppliers and manufacturers located in the United States, including in connection with the violation of the AECA for which he was convicted. Thus, I find that Dahua is related to Henry within the meaning of Section 766.23, and that Dahua should be added as a related person to prevent evasion of this order.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until November 19, 2025, Mark Henry, a/k/a Weida Zheng, a/k/a Scott Russel, a/k/a Bob Wilson, a/k/a Joanna Zhong, with a last known address of FCI Schuylkill, Federal Correctional Institution, Satellite Camp, P.O. Box 670, Minersville, PA 17954, and when acting for or on his behalf, his successors, assigns, employees, agents, or representatives, and Dahua Electronics Corporation, a/k/a Bao An Corporation, with a last known address of 134–12 59th Avenue, Flushing, NY 11355, and when acting for or on its behalf, its successors, assigns, directors, officers, employees, agents, or representatives (each ''a Denied Person'' and collectively ''the Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person, if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, in addition to the Related Person named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other individual, firm, corporation, or other association or organization or other person related to a Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order if necessary to prevent evasion of this Order.

Fourth, in accordance with Part 756 and Section 766.25(g) of the Regulations, Henry may file an appeal of the issuance of this Order against him with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, in accordance with Part 756 and Section 766.23(c) of the Regulations, Dahua may file an appeal of its being named as a related person in this Order with the Under Secretary of Commerce for Industry and Security.[3] This appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Sixth, a copy of this Order shall be delivered to Henry and Dahua and shall be published in the **Federal Register**.

Seventh, this Order is effective immediately and shall remain in effect until November 19, 2025.

Issued this 28th day of September, 2017.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2017–21475 Filed 10–4–17; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Robert J. Shubert, Sr., Currently Incarcerated at: Inmate Number: 96749–020, FCI Coleman Low, P.O. Box 1031, Coleman, FL 33521; and With a Prior Known Address at: 417 Hedlund Drive, Warner Robbins, GA 31088

Order Denying Export Privileges

On October 15, 2014, in the U.S. District Court, Middle District of Georgia, Robert J. Shubert, Sr. (''Shubert'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Shubert was convicted of knowingly and willfully exporting, from the United States to Japan, Dual Sensor Night Vision Goggles designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Shubert was sentenced to 78 months in prison, 36 months of supervised release, a $15,000 fine, and a $300 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent

[3] As set forth in Section 766.23(c), the only issues that may be raised in such an appeal are whether the person so named is related to the respondent and whether the order is justified in order to prevent evasion. Thus, Dahua may not appeal the issuance of the denial order against Henry.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2017). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)) (''EAA'' or ''the Act''). Since

Continued

part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act], the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued pursuant to the Export Administration Act (''EAA'' or ''the Act'') or the Regulations in which the person had an interest at the time of his/her conviction.

BIS has received notice of Shubert's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for Shubert to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Shubert.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Shubert's export privileges under the Regulations for a period of ten (10) years from the date of Shubert's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Shubert had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until October 15, 2024, Robert J. Shubert, Sr., currently incarcerated at Inmate Number: 96749–020, FCI Coleman Low, P.O. Box 1031, Coleman, FL 33521, and with a prior known address of 417 Hedlund Drive, Warner Robbins, GA 31088, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Shubert by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Shubert may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Shubert and shall be published in the **Federal Register.**

Sixth, this Order is effective immediately and shall remain in effect until October 15, 2024.

Issued this 28th day of September, 2017.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2017–21473 Filed 10–4–17; 8:45 am]

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August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

DEPARTMENT OF COMMERCE

Bureau of Industry And Security

Order Denying Export Privileges

In the Matter of: John Francis Stribling, Inmate Number: 87652–083, FCI Loretto, P.O. Box 1000, Loretto, PA 15940.

On July 6, 2016, in the U.S. District Court, Eastern District of Virginia, John Francis Stribling (''Stribling'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Stribling was convicted of knowingly and willfully exporting from the United States to Indonesia, two pistols and two rifles designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Stribling was sentenced to two years in prison, three years of supervised release, and a $100 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or

''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act], the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued pursuant to the Export Administration Act (''EAA'' or ''the Act'') or the Regulations in which the person had an interest at the time of his/her conviction.

BIS has received notice of Stribling's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for Stribling to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Stribling.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Stribling's export privileges under the Regulations for a period of five (5) years from the date of Stribling's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Stribling had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

First, from the date of this Order until July 6, 2021, John Francis Stribling, with a last known address of Inmate Number: 87652–083, FCI Loretto, P.O. Box 1000, Loretto, PA 15940, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Stribling by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Stribling may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Stribling and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until July 6, 2021.

Issued this 28th day of September 2017.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2017–21471 Filed 10–4–17; 8:45 am]

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2017). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)) (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–817]

Oil Country Tubular Goods From the Republic of Turkey: Amendment of Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 30, 2017, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the Department of Commerce's (the Department) remand redetermination concerning the countervailing duty (CVD) investigation of oil country tubular goods (OCTG) from the Republic of Turkey (Turkey). This judgment was not appealed within the 90-day deadline, and became final and conclusive on August 28, 2017. The Department previously notified the public that the final judgment in this case by the U.S. Court of International

Trade (CIT) is not in harmony with the Department's final determination in the CVD investigation of OCTG from Turkey. Because the judgment in this case is now final and conclusive, the Department is amending its CVD order on OCTG from Turkey covering the period of investigation of January 1, 2012, through December 31, 2012, to exclude Tosyali Dis Ticaret A.S, Tosçelik Profil ve Sac Endustrisi A.S., Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Demir Celik San. A.S., and Tosyali Holding A.S. (collectively, Tosçelik) from the order, and to revise the net countervailing subsidy rate for Borusan Istikbal Ticaret, Borusan Mannesmann Boru Sanayi, Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S. (collectively, Borusan) and the ''all others'' rate.

DATES: Applicable March 3, 2016.

FOR FURTHER INFORMATION CONTACT: Aimee Phelan or Jennifer Shore, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0697 or (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2014, the Department published its final affirmative CVD determination and final affirmative critical circumstances determination in this proceeding.[1] The Department reached affirmative determinations for mandatory respondents Borusan and Tosçelik. On September 2, 2014, the International Trade Commission notified the Department of its affirmative determination that an industry in the U.S. was materially injured by reason of OCTG that were subsidized by the Government of Turkey (GOT).[2] On September 10, 2014, the Department published the CVD orders on OCTG from India and the Republic of Turkey.[3] The petitioner, Maverick Tube Corporation, and Borusan, each appealed the *Final Determination* to the CIT.[4] In *Borusan,* the CIT remanded for further consideration the Department's finding of distortion in the Turkish hot-rolled steel (HRS) market, the Department's selection of a HRS benchmark, and the Department's application of facts available with adverse inferences with respect to purchases of HRS by respondent Borusan. In *Maverick,* the CIT remanded issues pertaining to the Department's HRS benchmark calculations as well and, in addition, the Department's benchmark valuation for a parcel of land that the GOT granted to Tosçelik in 2008 for less than adequate remuneration.

On August 31, 2015, the Department issued its *Remand Redetermination* in accordance with the CIT's Order.[5] On remand, the Department revised the net countervailable subsidy rates for Borusan, Tosçelik, and the ''all others'' rate. On February 22, 2016, the CIT affirmed the Department's *Remand Redetermination*.[6] In response to the CIT's February 22, 2016, decision, the Department published a notice of court decision not in harmony with the final determination of the CVD investigation, and amended its *Final Determination* with respect to Borusan, Tosçelik, and the ''all others'' rate.[7] The revised net countervailable subsidy rates for Tosçelik and Borusan are 0.95 percent and 2.39 percent, respectively. The revised ''all others'' rate is 2.39 percent. Because neither Tosçelik nor Borusan had a superseding cash deposit rate (*e.g.,* from an administrative review), the Department issued amended cash deposit instructions to U.S. Customs and Border Protection (CBP) on March 16, 2016.[8]

Borusan appealed, and Maverick cross-appealed, the CIT's decision to the CAFC, which affirmed the Department's *Remand Redetermination* on May 30, 2017.[9] Parties had 90 days, until August 28, 2017, to appeal the CAFC's decision by filing a petition for *writ of certiorari* with the United States Supreme Court. No party appealed.

Amendment of the Order on OCTG From Turkey

The period to appeal the CAFC's decision has passed, and a final and conclusive court decision has been reached in this case. Therefore, the Department is amending the CVD order on OCTG from Turkey [10] to exclude from the order subject merchandise produced and exported by Tosçelik [11] because the revised net countervailable subsidy rate is *de minimis.*

Net Countervailable Subsidy Rates

The net countervailable subsidy rates are as follows:

[1] *See Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 79 FR 41964 (July 18, 2014) (*Final Determination*).

[2] *See* Letter from the ITC to the Department, dated September 2, 2014; *see also Certain Oil Country Tubular Goods from India, Korea, Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam* (Investigation Nos. 701–TA–499–500 and 731–TA–1215–1217 and 1219–1223 (Final) USITC Publication 4489, September 2014.

[3] *See Certain Oil Country Tubular Goods from India and the Republic of Turkey: Countervailing Duty Orders and Amended Affirmative Final Countervailing Duty Determination for India,* 79 FR 53688 (September 10, 2014) (*Orders*).

[4] *See Borusan Mannesmann Boru Sanayi Ve Ticaret A.S.* v. *United States,* 61 F. Supp. 3d 1306 (CIT 2015) (*Borusan*); and *Maverick Tube Corporation* v. *United States,* Consol. Court No. 14–00229, Slip Op. 15–59 (CIT 2015) (*Maverick*). On June 22, 2015, the CIT granted a motion to consolidate Court No. 14–00214 into Consolidated Court No. 14–00229.

[5] *See* Final Results of Remand Redetermination, *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret* v. *United States; Maverick Tube Corporation* v. *United States,* Consol. Ct. No. 14–00229, 61 F. Supp. 3d 1306 and Slip Op. 15–59, dated August 31, 2017 (*Remand Redetermination*).

[6] *See Maverick Tube Corporation* v. *United States,* CIT Consol. Court No. 14–00229, Slip Op. 16–16 (February 22, 2016).

[7] *See Oil Country Tubular Goods from Turkey: Notice of Court Decision not in Harmony with the Final Determination of the Countervailing Duty Investigation,* 81 FR 12691 (March 10, 2016) (*Timken Notice*).

[8] *See* Message No. 6076302, dated March 16, 2016 (Message No. 6076302).

[9] *See Maverick Tube Corporation* v. *United States,* 857 F.3d 1353 (Fed. Cir. 2017).

[10] *See Orders.*

[11] The Department determined that Tosyali Dis Ticaret A.S, Tosçelik Profil ve Sac Endustrisi A.S., Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Demir Celik San. A.S., and Tosyali Holding A.S. are cross-owned. *See Final Determination* and accompanying Issues and Decision Memorandum, at 6–8.

Producer/exporter	Net subsidy rate (percent)
Borusan Istikbal Ticaret, Borusan Mannesmann Boru Sanayi, Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S [12]	2.39
Tosyali Dis Ticaret A.S, Tosçelik Profil ve Sac Endustrisi A.S., Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Demir Celik San. A.S., and Tosyali Holding A.S	* 0.95
All Others	2.39

* *De minimis.*

Continuation of Suspension of Liquidation, in Part

In accordance with section 705(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), the Department has instructed CBP to continue to suspend liquidation on all relevant entries of OCTG from Turkey.[13] These instructions suspending liquidation will remain in effect until further notice. However, because the revised countervailable subsidy rate for Tosçelik is *de minimis,* the Department is directing CBP to liquidate all entries produced and exported by Tosçelik currently suspended without regard to countervailing duties, and to discontinue the suspension of liquidation of entries of subject merchandise where Tosçelik acted as both the producer and exporter. Entries of subject merchandise exported to the United States by any other producer and exporter combination involving Tosçelik are not entitled to this exclusion from suspension of liquidation and are subject to the cash deposit rate for the ''all others'' entity.

Because the net countervailable subsidy rate determined for Tosçelik is *de minimis,* consistent with the requirement under section 705(c)(5)(A) of the Act that the calculation of the ''all others'' rate excludes zero or *de minimis* rates calculated for the companies individually investigated, the Department revised the ''all others'' rate.[14] Therefore, for purposes of the amended CVD order with respect OCTG from Turkey, the ''all others'' cash deposit rate is amended to Borusan's revised calculated subsidy rate of 2.39 percent.

Notification to Interested Parties

This notice constitutes the amended CVD order with respect OCTG from Turkey. This notice is issued and published in accordance with sections 516A(e) and 706(a) of the Act.

Dated: September 27, 2017.

Carole Showers,

Executive Director, Office of Policy performing the duties of the Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–21460 Filed 10–4–17; 8:45 am]

BILLING CODE 3510–DS–P

[12] The Department determined that Borusan Istikbal Ticaret, Borusan Mannesmann Boru Sanayi, Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S. are cross owned. Id. at 4–6.

[13] *Id.,* 79 FR at 53690; *see also* Message No. 4260305, dated September 17, 2014, and Message No. 6076302, dated March 16, 2016.

[14] *See Timken Notice,* 81 FR, at 12692.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502, A–549–502, and A–489–501]

Certain Welded Carbon Steel Pipes and Tubes From India, Thailand, and Turkey: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (the Department) finds that revocation of the antidumping duty (AD) orders on certain welded carbon steel pipes and tubes (pipes and tubes) from India, Thailand, and Turkey would likely lead to a continuation or recurrence of dumping. Further, the magnitude of the margins of dumping that are likely to prevail are identified in the ''Final Results of Review'' section of this notice.

DATES: Applicable October 5, 2017.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1757 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

In 1986, the Department published the AD orders on pipes and tubes from India, Thailand, and Turkey.[1] On June 2, 2017, the Department published the notice of initiation of the fourth sunset review of the AD orders on pipes and tubes pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

For each of these sunset reviews the Department received notice of intent to participate on behalf of Bull Moose Tube, TMK IPSCO Tubulars, Zekelman Industries, and EXLTUBE (collectively, the domestic interested parties) within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers in the United States of the domestic like product.

On June 30, 2017, the Department received complete substantive responses to the *Initiation* from the domestic interested parties within the 30-day period, as specified in 19 CFR 351.218(d)(3)(i).[3] We received no substantive responses from respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the AD orders on pipe and tube from India, Thailand, and Turkey.

Scope of the Orders

See the Appendix to this notice.

Analysis of Comments Received

All issues raised in these sunset reviews, including the likelihood of

[1] *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986); *Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 51 FR 8341 (March 11, 1986); *and Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey,* 51 FR 17784 (May 15, 1986).

[2] *See Initiation of Five-Year (''Sunset'') Reviews,* 82 FR 25599 (June 2, 2017) (*Initiation*).

[3] *See* Letters from domestic interested parties regarding, ''Fourth Five-Year (''Sunset'') Review Of Antidumping Duty Order On Welded Carbon Steel Pipe And Tube from India: Domestic Industry's Substantive Response,'' dated June 30, 2017; ''Fourth Five-Year (''Sunset'') Review Of Antidumping Duty Order On Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Domestic Industry's Substantive Response,'' dated June 30, 2017; and Fourth Five-Year (''Sunset'') Review Of Antidumping Duty Order On Certain Circular Welded Carbon Steel Pipes and Tubes from Turkey: Domestic Industry's Substantive Response,'' dated June 30, 2017.

continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the orders are revoked, are addressed in the Issues and Decision Memorandum.[4] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and 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.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the AD orders on pipes and tubes from India, Thailand, and Turkey would likely lead to the continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail if the AD orders are revoked would be up to the following:

India above—*de minims*

Thailand—15.60 percent

Turkey—23.12 percent

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of propriety information disclosed under APO in accordance with 19 CFR 351.305. 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 subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: September 29, 2017.

Carole Showers,

Executive Director, Office of Policy performing the duties of the Deputy Assistant Secretary for Enforcement and Compliance.

APPENDIX

Scope of the Antidumping Duty Orders

India—Welded Carbon Steel Pipe and Tube (A–533–502)

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.[5]

Thailand—Welded Carbon Steel Pipe and Tube (A–549–502)

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.[6] [7]

Turkey—Welded Carbon Steel Pipe and Tube (A–489–501)

The products covered by this order include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized

[4] *See* Memorandum, titled, ''Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey,'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

[5] *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review,* 75 FR 69626, 69627 (November 15, 2010).

[6] *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 75 FR 64696 (October 20, 2010).

[7] There was one scope ruling in which British Standard light pipe 387/67, Class A–1 was found to be within the scope of the order per remand. *See Scope Rulings,* 58 FR 27542, (May 10, 1993).

Tariff Schedule of the United States (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.[8]

[FR Doc. 2017–21461 Filed 10–4–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Upcoming Secretary-Led International Trade Administration Multi-Sector Trade Mission to China

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, is amending the Notice published at Vol. 82, No. 187 (82 FR 45264, September 28, 2017), the Secretary-Led International Trade Administration Multi-Sector Trade Mission to China, to modify the maximum number of delegation participants, set at 25 U.S. participants, to allow for additional participants on the mission.

SUPPLEMENTARY INFORMATION: Amendments to revise the number of delegation participants.

Background

Based on the high interest in the mission and the significant number of applications received to date, it has been determined that the Department of Commerce may accept more than 25 U.S. firms or trade associations as delegation participants for the Trade Mission to China. The final number of participants will be determined based on the review of applications and the capacity of the Department of Commerce to accommodate additional participants on the delegation. The application deadline remains October 6, 2017. All applications will be assessed according the conditions and criteria that are included in the original **Federal Register** notice and Mission Statement located on the Web site.

Notice of this change was posted on the Mission Web site (*www.export.gov/ChinaMission2017*) on Monday, October 2, 2017.

Contacts

General Business and Applications: The Office of Business Liaison, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 5062, Washington, DC 20230, Phone: +1–202–482–1360, Fax: 202–482–4054, Email: *BusinessLiaison@doc.gov*.

Tyler Shields: Director, The Office of China and Mongolia, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 38013, Washington, DC 20230, Phone: +1–202–482–3544, Email: *tyler.shields@trade.gov*.

Frank Spector,

Senior Advisor for Trade Missions.

[FR Doc. 2017–21565 Filed 10–4–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF720

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a two-day public meeting of its Scientific & Statistical Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, October 23, 2017, beginning at 10 a.m. and Tuesday, October 24, 2017. beginning at 9 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Garden Inn, Boston Logan, 100 Boardman Street, Boston, MA 02128; phone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will review recent stock assessment information from the 2017 Groundfish Operational Assessment updates and information provided by the Council's Groundfish Plan Development Team and recommend the overfishing levels and acceptable biological catch for all groundfish stocks (except for Georges Bank yellowtail flounder and Atlantic halibut) managed under the Northeast Multispecies Fishery Management Plan for fishing years 2016–2018. Other business will be discussed as needed.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–21463 Filed 10–4–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF719

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC). See **SUPPLEMENTARY INFORMATION**.

[8] *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Antidumping Duty Administrative Review,* 75 FR 64250. 64251 (October 19, 2010).

DATES: The SSC will meet Tuesday, October 24, 2017, from 1:30 p.m. until 5:30 p.m.; Wednesday, October 25, 2017, from 8:30 a.m. until 5:30 p.m. and Thursday, October 26, 2017, from 8:30 a.m. until 3 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Town & Country Inn and Suites, 2008 Savannah Hwy, Charleston, SC 29407; phone: (800) 334–6660 or (843) 571–1000; fax: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The following items will be discussed by the SSC during the meeting:

1. Updates on 2016–17 landings, Annual Catch Limits (ACLs), Acceptable Biological Catches (ABCs), and Accountability Measures (AMs).

2. Updates on recent Southeast Data Assessment and Review (SEDAR) stock assessment program activities, the long-term assessment scheduling approach, and Council future assessment priorities; approve Terms of Reference, schedule, and identify participants for the Cobia Stock Identification Workshop, Greater Amberjack, and Red Porgy assessments; approve the revised Terms of Reference for SEDAR 55 assessment for Vermilion Snapper.

3. Discuss a NOAA Fisheries' Southeast Fisheries Science Center (SEFSC) report on the feasibility of a Gray Triggerfish assessment.

4. Review updated Red Grouper projections and provide fishing level recommendations.

5. Review the SEDAR 50 Blueline Tilefish assessment and provide fishing level recommendations.

6. Review the revised Golden Tilefish assessment and provide fishing level recommendations.

7. Discuss ABC Control Rule modifications.

8. Review Amendment 46 to the Snapper Grouper Fishery Management Plan addressing red snapper and evaluate SEFSC Index Projection methodology progress.

9. Review and comment on the Commercial and Recreational Snapper Grouper Visioning Amendments.

10. Review the South Atlantic Ecosystem Model and provide recommendations for future direction and utility of this tool.

11. Discuss the Wreckfish Individual Transferable Quota (ITQ) Program Review.

12. Receive updates and progress reports on ongoing Council amendments and activities including the Citizen Science Program.

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.

Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. Written comment to be considered by the SSC shall be provided to the Council office no later than one week prior to an SSC meeting. For this meeting, the deadline for submission of written comment is 12 p.m. Tuesday, October 17, 2017.

Multiple opportunities for comment on agenda items will be provided during SSC meetings. Open comment periods will be provided at the start of the meeting and near the conclusion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment. Additional opportunities for comment on specific agenda items will be provided, as each item is discussed, between initial presentations and SSC discussion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment. All comments are part of the record of the meeting.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 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: October 2, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–21465 Filed 10–4–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0649–XF726

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Law Enforcement Technical Committee (LETC), in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC).

DATES: The meeting will convene on Wednesday, October 18, 2017, starting at 8:30 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held at the Battle House Renaissance hotel, located at 26 North Royal Street, Mobile, AL 36602; telephone: (251) 338–2000.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; *steven.atran@gulfcouncil.org,* telephone: (813) 348–1630, and Mr. Steve Vanderkooy, Inter-jurisdictional Fisheries Coordinator, Gulf States Marine Fisheries Commission; *svanderkooy@gsmfc.org,* telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Joint Gulf Council's Law Enforcement Technical Committee and Gulf States Marine Fisheries Commission's Law Enforcement Committee Meeting Agenda

Wednesday, October 18, 2017, 8:30 a.m. until 5 p.m.

1. Introductions and Adoption of Agenda
2. Approval of Minutes (Joint Meeting October 13, 2016)
3. Special election for LETC Vice-chair
4. Discussion of Joint LETC/LEC Chairs

Gulf Council LETC Items

5. Options Paper for Amendment 36B—Modifications to Commercial Individual Fishing Quota Programs
6. Draft Amendment—State Management Program for Recreational Red Snapper
7. Options Paper for Venting Tools and Descending Devices
8. Options Paper for Draft Modifications to the Sea Turtle Release Protocol and Gear for the Reef Fish Fishery
9. Coral Amendment 9—Public Hearing Draft of Coral Habitat Areas Considered for Management in the Gulf of Mexico
10. Spiny Lobster Amendment 12—Bully net gear regulations for spiny lobster for the EEZ off Florida
11. Implications of Permit Transfers for Federal For-Hire Vessels
12. Review of the Guidelines for the 2017 Officer of the Year Award
13. Overview of Congressional Activities

GSMFC LEC Items

14. Potential JEA Gulf-Wide Observed Compliance Rates
15. IJF Program Activity
    a. Cobia Profile
    b. Officers' Pocket Guide
    c. Annual License and Fees
    d. Law Summary (red book)
16. State Report Highlights
    a. Florida
    b. Alabama
    c. Mississippi
    d. Louisiana
    e. Texas
    f. USCG
    g. NOAA OLE
    h. USFWS
17. Other Business

—Meeting Adjourns—

The Agenda is subject to change. The latest version of the agenda along with other meeting materials will be posted on the Council's file server, which can be accessed by going to the Council Web site at *http://www.gulfcouncil.org* and clicking on File Server under Quick Links. For meeting materials see folder ''LETC Meeting-2017-10'' on Gulf Council file server. The username and password are both ''gulfguest''.

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Law Enforcement, U.S. Fish and Wildlife Service, the U.S. Coast Guard, and the NOAA General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: October 2, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–21464 Filed 10–4–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF691

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 55 Assessment Scoping webinar for South Atlantic Vermilion Snapper.

SUMMARY: The SEDAR 55 assessment of the South Atlantic stock of Vermilion Snapper will consist of a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: A SEDAR 55 Assessment Scoping webinar will be held on Friday, October 20, 2017, from 9 a.m. until 1 p.m.

ADDRESSES:

Meeting address: The meetings will be held via webinar. The webinars are 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. The product of the SEDAR webinar series will be a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. 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 items of discussion in the Assessment Scoping webinar are as follows:

Participants will review data and discuss data issues, as necessary, and initial model issues.

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 5 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: October 2, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–21462 Filed 10–4–17; 8:45 am]

BILLING CODE 3510–22–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9968–36–OCFO]

Draft FY 2018–2022 Environmental Protection Agency Strategic Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability, request for public comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the *Draft FY 2018–2022 EPA Strategic Plan* for public review and comment, which is being revised as required by the Government Performance and Results Act (GPRA) Modernization Act of 2010. The agency anticipates the final *Strategic Plan* will be submitted to Congress in February 2018. For this notice, the EPA is seeking comment from individual citizens, states, tribes, local governments, industry, the academic community, non-governmental organizations, and all other interested parties.

DATES: Comments must be received on or before October 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–HQ–OA–2017–0533] to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Vivian Daub, Director, Planning Division, Office of Planning, Analysis, and Accountability, Office of the Chief Financial Officer, *ocfoinfo@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The GPRA Modernization Act of 2010 (Pub. L. 111–352), holds federal agencies accountable for using resources wisely and achieving program results. Specifically, the GPRA Modernization Act requires agencies to develop: *Strategic Plans,* which include a mission statement, set out long-term goals, objectives, and strategic measures, and describe strategies to achieve them over a four-year time horizon; two-year Agency Priority Goals to advance progress toward the highest priorities; *Annual Performance Plans,* which provide annual performance measures and activities toward the long-term *Strategic Plan;* and, *Annual Performance Reports,* which evaluate an agency's success in achieving the annual performance measures.

The *Strategic Plan* reflects the Administrator's priorities for advancing the Agency's mission to protect human health and the environment by setting three strategic goals:

- Core Mission: Deliver real results to provide Americans with clean air, land, and water.
- Cooperative Federalism: Rebalance the power between Washington and the states to create tangible environmental results for the American people.
- Rule of Law and Process: Administer the law, as Congress intended, to refocus the Agency on its statutory obligations under the law.

This *Strategic Plan* includes objectives and strategies for achieving the strategic goals, and establishes strategic measures and FY 2018–2019 Agency Priority Goals by which EPA will hold itself accountable to monitor progress in improving significantly the way EPA does business and environmental benefits, engaging closely with public sector partners at all levels and the regulated community.

Dated: September 19, 2017.

David A. Bloom,

Acting Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. 2017–21245 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2017–0430; FRL–9968–87–OAR]

Notice of Intent To Establish Voluntary Criteria for Radon Credentialing Organizations; Extension of the Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; extension of the comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an extension of the public comment period by 30 days for the Notice of Intent to Establish Voluntary Criteria for Radon Credentialing Organizations.

DATES: The comment period for the Notice of Intent to Establish Voluntary Criteria for Radon Credentialing Organizations (82 FR 39993), is extended. Written comments must be received on or before November 23, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0430, to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Katrin Kral, EPA Office of Radiation and Indoor Air, (202) 343–9454; *kral.katrin@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA published the Notice of Intent to Establish Voluntary Criteria for Radon Credentialing Organizations on August 23, 2017, in the **Federal Register** (82 FR 39993), which included a request for comments on or before October 23, 2017. The purpose of this document is to extend the public comment period.

A. What should I consider as I prepare my comments for the EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the notice by docket number, subject heading, **Federal Register** date and page number.
- Follow directions—EPA may ask you to respond to specific questions or organize comments by including a specific reference.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow it to be reproduced.
- Illustrate your concerns with specific examples and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. How can I learn more about this?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0430. Please refer to the original **Federal Register** for detailed information about this proposed action. The EPA has also included information on its Web site at *www.epa.gov/radon.* Depending on interest and questions received, EPA may host a question and answer session via webinar during the comment period. Please visit the Web site regularly for updates.

In response to requests for an extension, we are extending the public comment period through November 23, 2017. This action will provide the public additional time to provide comments.

Dated: September 26, 2017.

David Rowson,

Director, Indoor Environments Division.

[FR Doc. 2017–21519 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0671; FRL–9968–86]

Pesticides; Draft Guidance for Pesticide Registrants on Notifications, Non-Notifications and Minor Formulation Amendments; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of September 6, 2017, announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR Notice) entitled ''Pesticide Registration (PR) Notice 2017–XX: Notifications, Non-notifications and Minor Formulation Amendments.'' This document extends the comment period for 60 days, from October 6, 2017 to December 5, 2017 to allow stakeholders additional time to submit comments on the proposed guidance.

DATES: The comment period for the document published on September 6, 2017 (82 FR 42094), is extended. Comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0671, must be received on or before December 5, 2017.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0671, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** document of September 6, 2017 (82 FR 42094) (FRL–9963–53), which was set to end on October 6, 2017, by 60 days, or to December 5, 2017.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of September 6, 2017. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 28, 2017.

Richard P. Keigwin, Jr.,

Director, Office of Pesticide Programs.

[FR Doc. 2017–21373 Filed 10–4–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1202]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of

information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 6, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1202.

Title: Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies.

Form Number: Not Applicable (annual on-line certification).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents and Responses: 200 respondents; 200 responses.

Estimated Time per Response: Varies by respondent. Average of 837 hours per respondent.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Total Annual Burden: 167,350 hours.

Total Annual Cost: No Cost.

Obligation to Respond: Mandatory. The statutory authority for this collection of information is contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

Nature and Extent of Confidentiality: The Commission does not consider the fact of filing a certification to be confidential or the responses provided on the face of the certification. The Commission will treat as presumptively confidential and exempt from routine public disclosure under the federal Freedom of Information Act: (1) Descriptions and documentation of alternative measures to mitigate the risks of nonconformance with certification standards; (2) information detailing specific corrective actions taken; and (3) supplemental information requested by the Commission or Bureau with respect to a certification.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This is a revision of an information collection necessary to ensure that all Americans have access to reliable and resilient 911 communications, particularly in times of emergency, by requiring certain 911 service providers to certify implementation of key best practices or reasonable alternative measures. The information will be collected in the form of an electronically-filed, annual certification from each Covered 911 Service Provider, as defined in the Commission's 2013 *Report and Order,* in which the provider will indicate whether it has implemented certain industry-backed best practices. Providers that are able to respond in the affirmative to all elements of the certification will be deemed to satisfy the ''reasonable measures'' requirement in Section 12.4(b) of the Commission's rules. If a provider does not certify in the affirmative with respect to one or more elements of the certification, it must provide a brief explanation of what alternative measures it has taken, in light of the provider's particular facts and circumstances, to ensure reliable 911 service with respect to that element(s). Similarly, a service provider may also respond by demonstrating that a particular certification element is not applicable to its networks and must include a brief explanation of why the element(s) does not apply.

The information will be collected by the Public Safety and Homeland Security Bureau, FCC, for review and analysis, to verify that Covered 911 Service Providers are taking reasonable measures to maintain reliable 911 service. In certain cases, based on the information included in the certifications and subsequent coordination with the provider, the Commission may require remedial action to correct vulnerabilities in a service provider's 911 network if it determines that (a) the service provider has not, in fact, adhered to the best practices incorporated in the FCC's rules, or (b) in the case of providers employing alternative measures, that those measures were not reasonably sufficient to mitigate the associated risks of failure in these key areas. The Commission delegated authority to the Bureau to review certification information and follow up with service providers as appropriate to address deficiencies revealed by the certification process.

The purpose of the collection of this information is to verify that Covered 911 Service Providers are taking reasonable measures such that their networks comply with accepted best practices, and that, in the event they are not able to certify adherence to specific best practices, that they are taking reasonable alternative measures. The Commission

adopted these rules in light of widespread 911 outages during the June 2012 derecho storm in the Midwest and Mid-Atlantic states, which revealed that multiple service providers did not take adequate precautions to maintain reliable service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–21481 Filed 10–4–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0329]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 4, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991 or email at *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0329.

Title: Section 2.955, Equipment Authorization—Verification (Retention of Records).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and Responses: 8,000 respondents; 8,000 responses.

Estimated Time per Response: 18 hours (average).

Frequency of Response: One-time and on occasion reporting requirements, recordkeeping requirement; and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 302, 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 302 and 303(r).

Total Annual Burden: 144,000 hours.

Total Annual Cost: $1,600,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Commission rules require equipment testing to determine performance and compliance with FCC standards. This testing is typically done by either the manufacturer's testing laboratory or an independent testing laboratory.

Needs and Uses: This collection will be submitted as an extension after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

Section 2.955 describes for each equipment device subject to verification, the responsible party, as shown in 47 CFR 2.909 shall maintain the records listed as follows:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the requirements of § 2.953.

(2) A record of the procedures used for production inspection and testing (if tests were performed) to insure the conformance required by § 2.953. (Statistical production line emission testing is not required.)

(3) A record of the measurements made on an appropriate test site that demonstrates compliance with the applicable regulations in this chapter. The record shall:

(i) Indicate the actual date all testing was performed;

(ii) State the name of the test laboratory, company, or individual performing the verification testing. The Commission may request additional information regarding the test site, the test equipment or the qualifications of the company or individual performing the verification tests;

(iii) Contain a description of how the device was actually tested, identifying the measurement procedure and test equipment that was used;

(iv) Contain a description of the equipment under test (EUT) and support equipment connected to, or installed within, the EUT;

(v) Identify the EUT and support equipment by trade name and model number and, if appropriate, by FCC Identifier and serial number;

(vi) Indicate the types and lengths of connecting cables used and how they were arranged or moved during testing;

(vii) Contain at least two drawings or photographs showing the test set-up for the highest line conducted emission and showing the test set-up for the highest radiated emission. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used;

(viii) List all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the regulations in this chapter;

(ix) Include all of the data required to show compliance with the appropriate regulations in this chapter; and

(x) Contain, on the test report, the signature of the individual responsible for testing the product along with the name and signature of an official of the responsible party, as designated in § 2.909.

(4) For equipment subject to the provisions in part 15 of this chapter, the records shall indicate if the equipment was verified pursuant to the transition provisions contained in § 15.37 of this chapter.

(b) The records listed in paragraph (a) of this section shall be retained for two years after the manufacture of said equipment item has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the manufacturer or importer is officially notified that an investigation or any other administrative proceeding involving his equipment has been instituted.

The Commission needs and requires the information under FCC Rules at 47 CFR parts 15 and 18, that RF equipment manufacturers (respondents) ''self-determine'' their responsibility for adherence to these rules, as guided by the following criteria:

(a) Whether the RF equipment device that is being marketed complies with the applicable Commission Rules; and

(b) If the operation of the equipment is consistent with the initially documented test results, as reported to the Commission.

The information collection is essential to controlling potential interference to radio communications.

(a) Companies that manufacture RF equipment are the anticipated respondents to this information collection.

(b) This respondent ''public'' generally remains the same, although the types of equipment devices that they manufacture may change in response to changing technologies and to new spectrum allocations made by the Commission.

(c) In addition, the Commission may establish new technical operating standards in response to these changing technologies and in allocation spectrum, which these RF equipment manufacturers must meet to receive their equipment authorization from the FCC.

(d) However, the process that RF equipment manufacturers must follow to verify their compliance, as mandated by 47 CFR 2.955 of FCC Rules, will not change despite new technical standards established for specific equipment.

This information collection, therefore, applies to a variety of equipment, which is currently manufactured in the future, and that operates under varying technical standards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–21516 Filed 10–4–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1242]

Information Collection Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (Commission) has received Office of Management and Budget (OMB) approval, on an emergency basis, for a new, one-time information collection pursuant to the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1242.

OMB Approval Date: September 27, 2017.

OMB Expiration Date: March 31, 2018.

Title: Qualified 4G LTE Coverage Data Collection for Mobility Fund Phase II.

Form Number: N/A.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 64 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 3,200 hours.

Total Annual Cost: None.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 154, 254, and 303(r) of the Communications Act, as amended, 47 U.S.C. 4, 254, 303(r).

Nature and Extent of Confidentiality: The information collected under this collection is confidential and will not be made publicly available.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: In 2011, the Commission established the Mobility Fund, which consists of two phases. Mobility Fund Phase I provided one-time universal service support payments to immediately accelerate deployment of mobile broadband services. Mobility Fund Phase II (MF–II) will use a reverse auction to provide ongoing universal service support payments to continue to advance deployment of such services. In its February 2017 *Mobility Fund II Report and Order* (*MF–II Report and Order*) (FCC 17–11), the Commission adopted the rules and framework for moving forward expeditiously with the MF–II auction and stated that, prior to the auction, it would establish a map of areas presumptively eligible for MF–II support based on the most recently available FCC Form 477 mobile wireless coverage data, and provide a limited timeframe for parties to challenge those initial determinations during the pre-auction process. In its August 2017 *Order on Reconsideration and Second Report and Order* (FCC 17–102), the Commission, among other things, reconsidered its earlier decision to use FCC Form 477 data to compile the map of areas presumptively eligible for MF–II support. The Commission decided it would instead conduct a new, one-time data collection of 4G LTE coverage data that will be used for this purpose, concluding that for purposes of implementing MF–II expeditiously, this approach will provide the Commission and interested parties with the best available starting point for the challenge process and should result in fewer and more narrowly-focused challenges regarding representations of coverage. The information collected under this collection will be used by the Commission to compile the map of areas presumptively eligible for MF–II support.

The Commission received approval from OMB for the information collection requirements contained in OMB 3060–1242 on September 27, 2017.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–21482 Filed 10–4–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), announces the following meeting for the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR). This meeting is open to the public, limited in the room by 60 people and 75 lines over the phone. The public is also welcome to listen to the meeting by 1–888–790–2009, passcode: 7865774, with 75 lines. The deadline for notification of attendance is November 10, 2017. The public comment period is scheduled on Wednesday, November 15, 2017 from 2:00 p.m. until 2:15 p.m.; and from 3:25 p.m. until 3:40 p.m. EST, and on Thursday, November 16, 2017 from 10:10 a.m. until 10:25 a.m. EST. Individuals wishing to make a comment during Public Comment period, please email your name, organization, and phone number by November 6, 2017 to William Cibulas at *wic1@cdc.gov.*

DATES: The meeting will be held on November 15, 2017, 8:30 a.m. to 4:30 p.m., EST and November 16, 2017, 8:30 a.m. to noon, EST.

ADDRESSES: CDC, 4770 Buford Hwy., Atlanta, Georgia 30341, Building 107, Room 1A or by phone: 1–888–790–2009

FOR FURTHER INFORMATION CONTACT: Shirley Little, Program Analyst, NCEH/ATSDR, CDC, 4770 Buford Hwy., Mail Stop F–45, Atlanta, Georgia 30341, telephone (770) 488–0577; *snl7@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and wellbeing; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters To Be Considered: The agenda will include discussions on NCEH/ATSDR Director Updates; Noise-Induced Hearing Loss; NCEH/ATSDR Program Responses to BSC Guidance and Action Items; CDC's Hurricane Season Response; Lead Poisoning Prevention Program Updates; Flint Registry; Revision of blood lead level reference value (status); Discussion of Legislative Requirements of new Lead Exposure Poisoning Federal Advisory Committee; Amyotrophic Lateral Sclerosis (ALS) Program Update; Environmental Health Tracking Program update; updates from the National Institute of Environmental Health Sciences, the National Institute for Occupational Safety and Health, the U.S. Department of Energy and the U.S. Environmental Protection Agency. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–21422 Filed 10–4–17; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee (MSHRAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the following meeting for the Mine Safety and Health Research Advisory Committee (MSHRAC). This meeting is open to the public, limited only by the limited only by the space available. The meeting room accommodates approximately 50 people. If you wish to attend in person or by phone, please contact Marie Chovanec by email at *MChovanec@cdc.gov* or by phone at least 5 business days in advance of the meeting.

DATES: The meeting will be held on November 15, 2017, 8:00 a.m.–3:00 p.m., Mountain Time.

ADDRESSES: Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, CO 80228 or call 412–386–5302.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Welsh, Designated Federal Officer, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone 412–386–4040, fax 412–386–6614.

SUPPLEMENTARY INFORMATION:

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Considered: The meeting will focus on mining safety and health research projects and outcomes, including built-in-place refuge alternatives, explosion protection, domestic and international

collaborations, fatigue management systems, mitigating dynamic failure in western underground coal mines, mining strategic planning, and mining innovations research initiative. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–21423 Filed 10–4–17; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–2479]

Determination of Regulatory Review Period for Purposes of Patent Extension; KOVALTRY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for KOVALTRY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 4, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 3, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 4, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of December 4, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–2479 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; KOVALTRY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be

extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product KOVALTRY (antihemophilic factor (recombinant)). KOVALTRY is indicated for use in adults and children with hemophilia A for: (1) On-demand treatment and control of bleeding episodes; (2) perioperative management of bleeding; and (3) routine prophylaxis to reduce the frequency of bleeding episodes. Subsequent to this approval, the USPTO received a patent term restoration application for KOVALTRY (U.S. Patent No. 5,804,420) from Bayer HealthCare LLC, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 14, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of KOVALTRY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for KOVALTRY is 2,478 days. Of this time, 2,021 days occurred during the testing phase of the regulatory review period, while 457 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* June 5, 2009. FDA has verified the Bayer HealthCare LLC's claim that the date the investigational new drug application became effective was on June 5, 2009.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 16, 2014. FDA has verified the applicant's claim that the biologics license application (BLA) for KOVALTRY (BLA 125574/0) was initially submitted on December 16, 2014.

3. *The date the application was approved:* March 16, 2016. FDA has verified the applicant's claim that BLA 125574/0 was approved on March 16, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,466 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 29, 2017.

Anna K. Abram,

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

[FR Doc. 2017–21421 Filed 10–4–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0001]

Science Advisory Board to the National Center for Toxicological Research Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on November 6, 2017, from 8 a.m. to 5 p.m., and on November 7, 2017, from 8 a.m. to 11:20 a.m.

ADDRESSES: Heifer Village, One World Avenue, Little Rock, AR 72202. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm* and *https://www.heifer.org/what-you-can-do/experience-heifer/heifer-village/index.html.*

FOR FURTHER INFORMATION CONTACT: Donna Mendrick, National Center for Toxicological Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2208, Silver Spring, MD 20993–0002, 301–796–8892, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *https://*

www.fda.gov/AdvisoryCommittees/default.htm and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On November 6, 2017, the SAB Chair will welcome the participants, and the NCTR Director will provide a Center-wide update on scientific initiatives and accomplishments during the past year. The SAB will be presented with an overview of the Division of Systems Biology Subcommittee and the Subcommittee Site Visit Report and a response to this review. There will be updates from the NCTR Research Divisions and a public comment session.

On November 7, 2017, the Center for Biologics and Evaluation and Research, Center for Drug Evaluation and Research, Center for Devices and Radiological Health, Center for Tobacco Products, Center for Veterinary Medicine, and the Office of Regulatory Affairs will each briefly discuss their center-specific research strategic needs and potential areas of collaboration.

Following an open discussion of all the information presented, the open session of the meeting will close so the SAB members can discuss personnel issues at NCTR at the end of each day.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: On November 6, 2017, from 8 a.m. to 5 p.m., and November 7, 2017, from 8 a.m. to 11:20 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 30, 2017. Oral presentations from the public will be scheduled on November 6, 2017, between approximately 1:15 p.m. to 2:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 23, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 30, 2017.

Closed Committee Deliberations: On November 6, 2017, from 5 p.m. to 5:30 p.m., and November 7, 2017, from 11:20 a.m. to 12 noon, the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Donna Mendrick at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: *September 29, 2017.*

Anna K. Abram,

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

[FR Doc. 2017–21440 Filed 10–4–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–1298]

Determination of Regulatory Review Period for Purposes of Patent Extension; IMPELLA 2.5 SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for IMPELLA 2.5 SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 4, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 3, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 4, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of December 4, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are

solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff Office, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–1298 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; IMPELLA 2.5 SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff Office. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device IMPELLA 2.5 SYSTEM. IMPELLA 2.5 SYSTEM is indicated for temporary (≤6 hours) ventricular support during high risk percutaneous coronary interventions (PCI) performed in elective or urgent, hemodynamically stable patients with severe coronary artery disease and depressed left ventricular ejection fraction, when a heart team, including a cardiac surgeon, has determined high risk PCI is the appropriate therapeutic option. Subsequent to this approval, the USPTO received a patent term restoration application for IMPELLA 2.5 SYSTEM (U.S. Patent No. 5,911,685) from Abiomed Europe GmbH, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 12, 2016, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of IMPELLA 2.5 SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for IMPELLA 2.5 SYSTEM is 3,227 days. Of this time, 2,858 days occurred during the testing phase of the regulatory review period, while 369 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* May 24, 2006. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective was May 24, 2006.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* March 20, 2014. FDA has verified the applicant's claim that the premarket approval application (PMA) for IMPELLA 2.5 SYSTEM (PMA

P140003) was initially submitted on March 20, 2014.

3. *The date the application was approved:* March 23, 2015. FDA has verified the applicant's claim that PMA P140003 was approved on March 23, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,796 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 29, 2017.

Anna K. Abram,

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

[FR Doc. 2017–21436 Filed 10–4–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–4482]

Clarification of the Food and Drug Administration and Environmental Protection Agency Jurisdiction Over Mosquito-Related Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry #236 entitled ''Clarification of FDA and EPA Jurisdiction Over Mosquito-Related Products.'' This guidance provides information regarding regulatory oversight of mosquito-related products, defined as those articles for use in or on mosquitoes. We are clarifying circumstances under which such products are regulated by the Food and Drug Administration (FDA) as new animal drugs under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and other circumstances under which such products are regulated by the Environmental Protection Agency (EPA) as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The announcement of the guidance is published in the **Federal Register** on October 5, 2017.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–4482 for ''Regulation of Mosquito-Related Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Laura R. Epstein, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–796–8558, *Laura.Epstein@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 19, 2017 (82 FR 6574), FDA published the notice of availability for a draft guidance entitled ''Regulation of Mosquito-Related Products'' giving interested persons until February 21, 2017, to comment on the draft guidance. FDA has finalized that draft guidance and is issuing final guidance entitled ''Clarification of FDA and EPA Jurisdiction over Mosquito-Related Products.'' This guidance provides information for industry and other stakeholders regarding regulatory oversight of mosquito-related products, defined as those articles for use in or on mosquitoes. Given the public health implications of mosquito control, FDA is providing this guidance to clarify the regulatory jurisdiction of mosquito-related products, including but not limited to those produced through biotechnology. This guidance is important in light of the public health urgency of countering the spread of mosquito-borne disease, such as that caused by the Zika virus. Vector control is a critical element of the effort to combat the spread of mosquito-borne disease. Novel mosquito control technologies have gained greater attention as an element of this effort; however, there has been some confusion with respect to FDA's and EPA's respective jurisdiction over such mosquito-related products. We are clarifying circumstances under which such products are regulated by FDA as new animal drugs under the FD&C Act and other circumstances under which such products are regulated by EPA as pesticides under FIFRA. FDA is clarifying that the phrase ''articles (other than food) intended to affect the structure or any function of the body of man or other animals'' in the FD&C Act's drug definition (21 U.S.C. 321(g)(1)(C)) does not include articles intended to function as pesticides by preventing, destroying, repelling, or mitigating mosquitoes for population control purposes. FDA believes that this interpretation is consistent with congressional intent and provides a rational approach for dividing responsibilities between FDA and EPA in regulating mosquito-related products.

FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. Some comments on the draft guidance expressed confusion about how the intended use of a product can determine whether a product is a drug or a pesticide. The definition of ''drug'' in the FD&C Act depends upon the ''intended use'' of a product. A product is a drug if it is intended to do certain things (*i.e.,* if it is ''intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease . . .'' and ''to affect the structure or any function of the body . . .'' and for use as a component of such a product. (21 U.S.C. 321(g)(1)). Even when considering products subject only to the FD&C Act, the same product may be classified differently depending on the intended use. For example, an article that is intended to treat disease in an animal is an animal drug, while the same article if intended to control mold growth in animal feed could be a food additive (*i.e.,* a substance ''the intended use of which results . . . in its becoming a component or otherwise affecting the characteristics of any food . . . if such substance is not generally recognized among experts qualified by scientific training and experience to evaluate its safety as having been adequately been shown . . . to be safe. . . .''). Similarly, whether a product is a ''pesticide'' under FIFRA also depends upon intended use (''pesticide'' means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest). As a commenter pointed out, this means that the same product can be a drug when intended for one use (*i.e.,* diagnosing, curing, mitigating, treating, or preventing disease) and a pesticide when intended for another use (*i.e.,* preventing, destroying, repelling, or mitigating a pest). We have updated the guidance document in response to these comments (see section III.C. of the guidance document). We have also revised the title of the guidance document to better reflect the scope of the document.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Clarification of FDA and EPA Jurisdiction Over Mosquito-Related Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance clarifies regulatory jurisdiction and is not a significant regulatory action subject to Executive Order 12866. Because FDA is clarifying that the definition of ''drug'' in the FD&C Act does not include articles intended to function as pesticides by preventing, destroying, repelling, or mitigating mosquitoes for population control purposes, it is a deregulatory action on the part of FDA in that it clarifies that the manufacturers of such articles will no longer be subject to FDA's regulatory jurisdiction.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *https://www.regulations.gov.*

Dated: October 2, 2017.

Anna K. Abram,

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

[FR Doc. 2017–21494 Filed 10–4–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–E–0944, FDA–2014–E–0950, FDA–2014–E–0943, FDA–2014–E–0945]

Determination of Regulatory Review Period for Purposes of Patent Extension; TECFIDERA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for TECFIDERA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 4, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 3, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 4, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of December 4, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal*: *https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions)*: Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2014–E–0944, FDA–2014–E–0950, FDA–2014–E–0943, and FDA–2014–E–0945 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; TECFIDERA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff Office between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff Office. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants

permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product TECFIDERA (dimethyl fumarate). TECFIDERA is indicated for treatment of patients with relapsing forms of multiple sclerosis. Subsequent to this approval, the USPTO received patent term restoration applications for TECFIDERA (U.S. Patent Nos. 6,509,376; 7,320,999; 7,619,001; and 7,803,840) from Biogen Idec International GmbH, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated November 4, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of TECFIDERA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TECFIDERA is 2,480 days. Of this time, 2,085 days occurred during the testing phase and 395 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* June 14, 2006. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was on June 14, 2006.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* February 27, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for TECFIDERA (NDA 204063) was initially submitted on February 27, 2012.

3. *The date the application was approved:* March 27, 2013. FDA has verified the applicant's claims that NDA 204063 was approved on March 27, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,438 days, 1,144 days, 811 days, or 654 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: *September 29, 2017.*

Anna K. Abram,

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

[FR Doc. 2017–21435 Filed 10–4–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0656]

Animal Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a forthcoming public meeting entitled ''Animal Drug User Fee Act.'' The topic to be discussed is proposed recommendations for the reauthorization of the Animal Drug User Fee Act (ADUFA IV). The meeting will be open to the public.

DATES: The public meeting will be held on November 2, 2017, from 9 a.m. to 12 noon. Submit either electronic or written comments on this public meeting to the docket by November 17, 2017. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at 7500 Standish Pl., Room N149 (first floor), Rockville, MD 20855. Free parking is available onsite. Attendees must provide a valid government issued photo ID (driver's license, identification card, or passport) to enter the facility. Entrance for the public meeting participants (non-FDA employees) is through the front of the building where routine security check procedures will be performed.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Comments must be submitted on or before November 17, 2017.[1] The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 17, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that

[1] This date corrects the comment closing date of December 1, 2017, stated in the **Federal Register** notice announcing the initial ADUFA reauthorization public meeting held on May 16, 2016 (81 FR 23313, April 20, 2016).

identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0656 for ''Animal Drug User Fee Act; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

In addition to being publicly viewable at *https://www.regulations.gov,* comments will also be published on *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/ucm042891.htm*.

FOR FURTHER INFORMATION CONTACT: Cassie Ravo, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6866, *cassie.ravo@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public meeting to discuss proposed recommendations for the reauthorization of ADUFA, which authorizes FDA to collect user fees and use them for the process of reviewing new animal drug applications and associated submissions. The authority for ADUFA expires September 30, 2018. Without new legislation, FDA will no longer have the authority to collect user fees to fund the new animal drug review process for future fiscal years. Section 740A(d)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379j–13(d)(4)) requires that, after holding negotiations with regulated industry and periodic consultations with stakeholder, and before transmitting the Agency's final recommendation to Congress for the reauthorized program (ADUFA IV), we do the following: (1) Present the recommendation to the relevant Congressional committees, (2) publish such recommendations in the **Federal Register**, (3) provide for a period of 30 days for the public to provide written comments on such recommendations, (4) hold a meeting at which the public may present its views on such recommendations, and (5) consider such public views and comments and revise such recommendations as necessary. This notice, the 30-day comment period, and the public meeting will satisfy certain of these requirements. After the public meeting, we will revise the draft recommendations as necessary. In addition, the Agency will present the draft recommendations to the Congressional committees.

FDA considers the timely review of the safety and effectiveness of new animal drug applications (NADAs) to be central to the Agency's mission to protect and promote human and animal health. Prior to 2004, the timeliness and predictability of the new animal drug review program was a concern. The Animal Drug User Fee Act enacted in 2003 (Pub. L. 108–130; hereinafter referred to as ''ADUFA I'') authorized FDA to collect user fees dedicated to the timely review of new animal drug applications in accordance with certain performance goals and to expand and modernize the new animal drug review program. The Agency agreed, under ADUFA I, to meet a comprehensive set of performance goals established to show significant improvement in the timeliness and predictability of the new animal drug review process. The implementation of ADUFA I provided a significant funding increase that enabled FDA to increase the number of staff dedicated to the new animal drug application review process by 30 percent in ADUFA I.

In 2008, before ADUFA I expired, Congress passed the Animal Drug User Fee Amendments of 2008 (Pub. L. 110–316; hereinafter referred to as ''ADUFA II'') which included an extension of ADUFA for an additional 5 years (fiscal year (FY) 2009 through FY 2013). ADUFA II performance goals were established based on ADUFA I FY 2008 review time frames. In addition, FDA provided program enhancements to reduce review cycles and improve communications during reviews. The ADUFA programs have enabled FDA to meet performance timeframes for application review for new animal drugs without compromising the quality of the Agency's review.

In 2013, Congress passed the Animal Drug and Animal Generic Drug User Fee Reauthorization Act of 2013, reauthorizing ADUFA (Pub. L. 113–14; hereinafter referred to as ''ADUFA III''). ADUFA II was set to expire September 30, 2013, and the new reauthorization extends ADUFA until 2018.

ADUFA III reauthorization maintained the FY 2013 review timeframes for key submissions in addition to enhancements to the program. Enhancements included: Replacing the End Review Amendment with a short, second-round review; reducing time for microbial food safety hazard characterization submissions to

100 days; and adding a variable inflation adjuster to account for changes in the Center for Veterinary Medicine's costs using the Consumer Price Index as a guide. Also, the proportion of revenue collected from fees was redistributed as follows: Application fees from 25 percent to 20 percent; product fees from 25 percent to 27 percent; establishment fees from 25 percent to 26 percent; and sponsor fees from 25 percent to 27 percent.

Additionally, there were chemistry, manufacturing, and controls (CMC) enhancements, including: Permitting the manufacturing supplements to be resubmitted as ''Supplement-Changes Being Effected in 30 Days'' if deficiencies are not substantial for manufacturing supplements requiring prior approval according to 21 CFR 514.8(b); permitting comparability protocols as described in 21 CFR 514.8(b)(2)(v) to be submitted as protocols without substantial data in an investigational new animal drug (INAD) file; and developing guidance for a two-phased CMC technical section submission and review process under the INAD file. The Agency agreed to explore the feasibility of pursuing expanded conditional approvals and of modifying the current requirement that the use of multiple new animal drugs in the same medicated feed (combination medicated feed) be subject to an approved application. The reauthorization of ADUFA is targeted to generate $114,000,000 in user fees over 5 years (FY 2014 through FY 2018).

FDA has published a number of reports that provide useful background on ADUFA I, II, and III. ADUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports can be found at: *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm*.

II. Topics for Discussion at the Public Meeting

In preparing the proposed recommendations to Congress for ADUFA reauthorization (ADUFA IV), we have conducted discussions with the regulated industry, and we have consulted with stakeholders as required by the law. We began the ADUFA reauthorization process with a public meeting held on May 16, 2016 (81 FR 23313, April 20, 2016). Following the May 2016 public meeting, FDA conducted negotiations with regulated industry and continued regular consultations with public stakeholders from October 2016 through April 2017. As directed by Congress, FDA posted minutes of these discussions on its Web site at *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/ucm042891.htm*.

The proposed enhancements from ADUFA IV address many of the top priorities identified by public stakeholders, the top concerns identified by regulated industry, and the most important challenges identified within FDA. The full descriptions of these proposed recommendations can be found in the proposed ADUFA IV Performance Goals and Procedures Letter. FDA intends to publish in the **Federal Register** the full text of the proposed ADUFA IV Performance Goals and Procedures Letter and a summary of proposed statutory changes, as well as post them at *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* before the public meeting and will provide for a period of 30 days for the public to provide written comments.

FDA will post the agenda approximately 5 days before the meeting at *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm*.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please contact Cassie Ravo (see **FOR FURTHER INFORMATION CONTACT**). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Also, please self-identify as a member of one of the following stakeholder categories: Scientific or academic experts; veterinary professionals; patients and consumer advocacy groups; or the regulated industry, and whether you are requesting a scheduled presentation.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by October 26, 2017, midnight Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 8:30 a.m. We will let registrants know if registration closes before the day of the public meeting. If you need special accommodations due to a disability, please contact Cassie Ravo (see **FOR FURTHER INFORMATION CONTACT**) no later than October 26, 2017.

Requests for Oral Presentations: When registering, you may indicate if you wish to present during a public comment session or participate in a specific session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by October 27, 2017. All requests to make oral presentations must be received by the close of registration on October 26, 2017. If selected for presentation, any presentation materials must be emailed to the Cassie Ravo (see **FOR FURTHER INFORMATION CONTACT**) no later than October 31, 2017. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the public meeting: This public meeting will also be webcast.

Event: ADUFA IV Public Meeting. Event address for attendees: *https://fda.webex.com/fda/onstage/g.php?MTID=e9adcd215b7dba5d99361b002663e51fe*. Date and time: Thursday, November 2, 2017, 9 a.m. Eastern Daylight Time (New York, GMT–4). Duration: 3 hours. Event number: 812 395 634. Event password: 110217. Teleconference: Provide your number when you join the event to receive a call back. (1) Call one of the following numbers: Local: 1–301–796–7777; toll free: 1–855–828–1770. (2) Follow the instructions that you hear on the phone. Cisco Unified MeetingPlace meeting ID: 812 395 634.

FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov*. It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at: *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/ucm042891.htm*.

Dated: September 29, 2017.

Anna K. Abram,

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

[FR Doc. 2017–21439 Filed 10–4–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the forthcoming public meeting entitled ''Animal Generic Drug User Fee Act.'' The topic to be discussed is proposed recommendations for the reauthorization of the Animal Generic Drug User Fee Act (AGDUFA III). The meeting will be open to the public.

DATES: The public meeting will be held on November 2, 2017, from 1 p.m. to 4 p.m. Submit either electronic or written comments on this public meeting by November 17, 2017. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at 7500 Standish Pl., Rm. N149 (first floor), Rockville, MD 20855. Free parking is available onsite. Attendees must provide a valid government issued photo ID (driver's license, identification card, or passport) to enter the facility. Entrance for the public meeting participants (non-FDA employees) is through the front of the building where routine security check procedures will be performed.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Comments must be submitted on or before November 17, 2017.[1] The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 17, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0655 for ''Animal Generic Drug User Fee Act; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

In addition to being publicly viewable at *https://www.regulations.gov,* comments will also be published on *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm.*

FOR FURTHER INFORMATION CONTACT: Cassie Ravo, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6866, *cassie.ravo@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public meeting to discuss proposed recommendations for the reauthorization of AGDUFA, which authorizes FDA to collect user fees and use them for the process of reviewing new animal generic drug applications and associated submissions. The authority for AGDUFA expires September 30, 2018. Without new legislation, FDA will no longer have the authority to collect user fees to fund the new animal generic drug review process for future fiscal years. Section 742(d)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379j–22(d)(4)) requires that, after holding negotiations with regulated industry and periodic consultations with stakeholders, and before transmitting the Agency's final

[1] This date corrects the comment closing date of December 1, 2017, stated in the **Federal Register** notice announcing the initial AGDUFA reauthorization public meeting held on May 16, 2016 (81 FR 23311, April 20, 2016).

recommendation to Congress for the reauthorized program (AGDUFA III), we do the following: (1) Present the recommendation to the relevant Congressional committees, (2) publish such recommendations in the **Federal Register**, (3) provide for a period of 30 days for the public to provide written comments on such recommendations, (4) hold a meeting at which the public may present its views on such recommendations, and (5) consider such public views and comments and revise such recommendations as necessary. This notice, the 30-day comment period, and the public meeting will satisfy certain of these requirements. After the public meeting, we will revise the draft recommendations as necessary. In addition, the Agency will present the draft recommendations to the Congressional committees.

FDA considers the timely review of abbreviated new animal drug applications (ANADAs) to be central to the Agency's mission to protect and promote human and animal health. Prior to 2009, the timeliness and predictability of the generic new animal drug review program was a concern. The Animal Generic Drug User Fee Act enacted in 2008 (Pub. L. 110–316; hereinafter referred to as ''AGDUFA I'') amended the FD&C Act to authorize the FDA's first-ever generic animal drug user fee program. AGDUFA I provided FDA with additional funds to enhance the performance and predictability of the generic new animal drug review process. Furthermore, the authorization of AGDUFA I enabled FDA's continued assurance that generic new animal drug products are safe and effective.

Under AGDUFA I, FDA agreed to meet review performance goals for certain submissions over 5 years from fiscal year (FY) 2009 through FY 2013. The purpose of establishing these review performance goals was to ensure the timely review of ANADAs and reactivations, supplemental ANADAs, and generic investigational new animal drug (JINAD) submissions, and as a result FDA has been able to reduce the time for the application review process for generic new animal drugs without compromising the quality of the Agency's review.

AGDUFA I established increasingly stringent review performance goals over a 5-year period from FY 2009 through FY 2013. Based on those performance goals, in the final year of AGDUFA I (FY 2013) FDA agreed to review and act on 90 percent of the following submission types within the specified time frames:

- Original ANADAs and reactivations within 270 days after the submission date.
- Administrative ANADAs within 100 days after the submission date.
- Manufacturing supplemental ANADAs and reactivations within 270 days after the submission date.
- JINAD study submissions within 270 days after the submission date.
- JINAD protocol submissions within 100 days after submission date.

With the reauthorization of AGDUFA for an additional 5 years under AGDUFA II (FY 2014 to FY 2018), FDA agreed to further enhance and improve the review process.

The AGDUFA II reauthorization enhancements included developing Question Based Review Process for Bioequivalence Submissions and shortening review time for key submission types. Additionally, there were chemistry, manufacturing, and controls (CMC) enhancements, including: Permitting manufacturing supplements to be resubmitted as ''Supplement-Changes Being Effected in 30 Days'' if deficiencies are not substantial for manufacturing supplements requiring prior approval according to 21 CFR 514.8(b); permitting comparability protocols as described in 21 CFR 514.8(b)(2)(v) to be submitted as protocols without substantial data in a JINAD file; and developing guidance for a two-phased CMC technical section submission and review process under the JINAD file. Finally, the proportion of revenue collected from user fees was redistributed as follows: Application fees from 30 percent to 25 percent; product fees from 35 percent to 37.5 percent; and sponsor fees from 35 percent to 37.5 percent.

FDA has published a number of reports that provide useful background on AGDUFA I and AGDUFA II. AGDUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports can be found at: *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm*.

II. Topics for Discussion at the Public Meeting

In preparing the proposed recommendations to Congress for AGDUFA reauthorization (AGDUFA III), we have conducted discussions with the regulated industry, and we have consulted with stakeholders as required by the law. We began the AGDUFA reauthorization process with a public meeting held on May 16, 2016 (81 FR 23311, April 20, 2016). Following the May 2016 public meeting, FDA conducted negotiations with regulated industry and continued regular consultations with public stakeholders from August 2016 through January 2017. As directed by Congress, FDA posted minutes of these discussions on its Web site at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm*. The proposed enhancements from AGDUFA III address many of the top priorities identified by public stakeholders, the top concerns identified by regulated industry, and the most important challenges identified within FDA. The full descriptions of these proposed recommendations can be found in the proposed AGDUFA III Performance Goals and Procedures Letter. FDA intends to publish in the **Federal Register** the full text of the proposed AGDUFA III Performance Goals and Procedures Letter and a summary of proposed statutory changes, as well as post them at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm*, before the public meeting, and will provide for a period of 30 days for the public to provide written comments.

FDA will post the agenda approximately 5 days before the meeting at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm*.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please contact Cassie Ravo (see **FOR FURTHER INFORMATION CONTACT**). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Also, please self-identify as a member of one of the following stakeholder categories: Scientific or academic experts; veterinary professionals; patients and consumer advocacy groups; or the regulated industry, and whether you are requesting a scheduled presentation.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by October 26, 2017, midnight Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 12:30 p.m. We will let registrants know if registration closes before the day of the public meeting.

If you need special accommodations due to a disability, please contact Cassie

Ravo (see **FOR FURTHER INFORMATION CONTACT**) no later than October 26, 2017.

Requests for Oral Presentations: When registering, you may indicate if you wish to present during a public comment session or participate in a specific session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by October 27, 2017. All requests to make oral presentations must be received by the close of registration on October 26, 2017. If selected for presentation, any presentation materials must be emailed to Cassie Ravo (see **FOR FURTHER INFORMATION CONTACT**) no later than October 31, 2017. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast.

Event: AGDUFA III Public Meeting. Event address for attendees: *https://fda.webex.com/fda/onstage/g.php?MTID=ec1c356734bcf010b59e0b885726ccad0*. Date and time: Thursday, November 2, 2017, 1 p.m. Eastern Daylight Time (New York, GMT–4). Duration: 3 hours. Event number: 817 527 611. Event password: 110217. Teleconference: Provide your number when you join the event to receive a call back. (1) Call one of the following numbers: Local: 1–301–796–7777; toll free: 1–855–828–1770. (2) Follow the instructions that you hear on the phone. Cisco Unified MeetingPlace meeting ID: 817 527 611.

FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov*. It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm*.

Dated: September 29, 2017.

Anna K. Abram,

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

[FR Doc. 2017–21438 Filed 10–4–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5017]

Health Canada and United States Food and Drug Administration Joint Public Consultation on International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use; Public Meeting and Webcast

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and webcast; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a regional public meeting entitled ''Health Canada and U.S. Food and Drug Administration Joint Public Consultation on International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH).'' The purpose of this public meeting is to provide information and solicit public input on the current activities of ICH as well as the upcoming ICH Assembly Meeting and the Expert Working Group Meetings in Geneva, Switzerland, scheduled for November 11 through 16, 2017. The topics to be discussed are the topics for discussion at the forthcoming ICH Assembly Meeting in Geneva.

DATES: The public meeting will be held on October 19, 2017, from 9 a.m. to 12 noon Eastern Time. Submit either electronic or written comments on this public meeting by October 26, 2017. See the **SUPPLEMENTARY INFORMATION** section for registration date and information. Registration to attend the meeting and requests for oral presentations must be received by October 16, 2017; see the **SUPPLEMENTARY INFORMATION** section for information on how to register for the meeting.

ADDRESSES: The public meeting will be held at the Sir Frederick G. Banting Research Centre, 251 Sir Frederick Banting Dr., Ottawa, ON K1Y 0M1, Canada. It will also be broadcast on the web allowing participants to join in person OR via the Web.

You may submit comments as follows: Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 26, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 27, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–5017 for ''Health Canada and U.S. Food and Drug Administration Joint Public Consultation on International Council on Harmonisation of Technical Requirements for Pharmaceuticals for Human Use; Public

Meeting.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, October 12, 2017, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amanda Roache, Food and Drug Administration, Center for Drug Evaluation and Research, Office of Strategic Programs, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring MD, 20993, 301–796–4548, email: *Amanda.Roache@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ICH, formerly known as the International Conference on Harmonisation, was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness. In 2015 the ICH was reformed to make the ICH a true global initiative that expands beyond the previous ICH members. More involvement from regulators around the world is expected, as they will join their counterparts from Europe, Japan, the United States, Canada, and Switzerland as ICH regulatory members. The reforms build on a 25-year track record of successful delivery of harmonized guidelines for global pharmaceutical development, and their regulation. In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory Agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the ICH regions over the past two decades. The current ICH process and structure can be found at the following Web site: *http://www.ich.org.* (FDA has verified the Web site addresses as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.)

II. Webinar Attendance and Participation

A. Registration

If you wish to attend the meeting, please register at the following Web site: *https://healthcanada-usfda_ich_consultation.eventbrite.ca.* For those attending online, a link will be provided upon registration. In person registrations may be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, the number of participants from each organization may be limited based on space limitations. Registrants will receive confirmation once they have been accepted. If you need special accommodations because of a disability, please contact Amanda Roache (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the webinar.

B. Requests for Oral Presentations

Interested persons may present data, information, or views orally or in writing on issues pending at the public webinar. Public oral presentations will be scheduled between approximately 11:30 a.m. and 12 noon. Time allotted for oral presentations may be limited to 5 minutes. Those desiring to make oral presentations should notify Amanda Roache (see **FOR FURTHER INFORMATION CONTACT**) by October 12, 2017, and submit a brief statement of the general nature of the evidence or arguments they wish to present; the names and addresses, telephone number, fax, and email of proposed participants; and an indication of the approximate time requested to make their presentation. The agenda for the public webinar will be made available on the internet at *https://www.fda.gov/Drugs/NewsEvents/ucm574251.htm.*

Dated: September 29, 2017.

Anna K. Abram,

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

[FR Doc. 2017–21437 Filed 10–4–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[OMB No. 0906–xxxx—New]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Scientific Registry of Transplant Recipients Information Collection Effort for Potential Donors for Living Organ Donation

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 November 6, 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 Lisa Wright-Solomon, 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: Scientific Registry of Transplant Recipients Information Collection Effort for Potential Donors for Living Organ Donation—OMB No. 0906–xxxx—New

Abstract: The Scientific Registry of Transplant Recipients (SRTR) is administered under contract with HRSA, an agency of HHS. HHS is authorized to establish and maintain mechanisms to evaluate the long-term effects associated with living donations (42 U.S.C. 273a) and is required to submit to Congress an annual report on the long-term health effects of living donation (42 U.S.C. 273b). The SRTR contractor will establish a pilot living donor registry in which 14 transplant programs will register all potential living donors who provide informed consent to participate in the pilot registry. The SRTR's authority to collect information concerning potential living donors is set forth in the Organ Procurement and Transplantation Network final rule requiring Organ Procurement Organizations and transplant hospitals to submit to the SRTR, as appropriate, information regarding ''donors of organs'' and ''other information that the Secretary deems appropriate.'' 42 CFR 121.11(b)(2).

Need and Proposed Use of the Information: The transplant programs will submit health information collected at the time of donation evaluation through a secure web-based data collection tool developed by the contractor. The SRTR contractor will maintain contact with registry participants and collect data on long-term health outcomes through surveys. The data collection will also include outcomes of evaluation including reasons for non-donation. The goal of the pilot registry is to develop data collection tools and survey instruments that can be used to expand the registry to include most, if not all, living donor transplant programs in the United States over time. Monitoring and reporting of long-term health outcomes of living donors post donation will provide useful information to transplant programs in their future donor selection process and will aid potential living donors in their decision to pursue living donation.

Likely Respondents: Potential living donors, transplant programs, medical and scientific organizations, and public organizations.

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 ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Average number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total burden hours
Potential Living Donor Registration form	14	55.43	776	1	776
Reasons Did not Donate Form (liver or kidney)	14	27.71	388	.50	194
Potential Living Donor Follow-up form	776	1	776	.50	388
Total	*804		1,940		1,358

*Number of respondents for potential living donor registration and reasons did not donate forms based on number of programs participating in the pilot registry. Number of respondents for potential living donor follow-up forms based on number of potential living donors evaluated at the 14 participating programs in 2015.

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.

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2017–21490 Filed 10–4–17; 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: Federal Tort Claims Act (FTCA) Program Deeming Applications for Free Clinics [OMB No. 0915–0293—Extension]

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

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 must be received no later than November 6, 2017.

ADDRESSES: Submit your comments, including the Information Collection Request 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 Lisa Wright-Solomon, 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: Federal Tort Claims Act (FTCA) Program Deeming Applications for Free Clinics—OMB No. 0915–0293—Extension.

Abstract: Section 224(o) of the Public Health Service (PHS) Act (42 U.S.C. 233(o)), as amended, authorizes the ''deeming'' of certain individuals as PHS employees for the purposes of receiving Federal Tort Claims Act (FTCA) coverage. Section 224(o) relates to employees, officers, and contractors at qualifying free clinics. The Free Clinics FTCA Program is administered by HRSA's Bureau of Primary Health Care (BPHC). Sponsoring free clinics are required by law to submit deeming applications in the specified form and manner on behalf of named individuals for review and approval, resulting in a ''deeming determination'' that includes associated FTCA coverage for these individuals.

Need and Proposed Use of the Information: Deeming applications must address certain specified criteria required by law for deeming determinations to be issued, and FTCA application forms are critical to BPHC's deeming determination processes. These forms provide BPHC with the information necessary to evaluate an application and determine whether an individual meets the requirements for deemed PHS employee status for the purposes of FTCA coverage. FTCA application forms for free clinics do not require any changes with this extension other than to update the applicable dates. In response to a **Federal Register** notice announcing the FTCA Program deeming applications for Free Clinics published on June 23, 2017 (Vol. 82, No. 120, pages 28667–28668), BPHC received several comments requesting that FTCA eligibility be extended to free clinics as entities. In response, BPHC notes that per Section 224(o) of the PHS Act (42 U.S.C. 233(o)), FTCA coverage cannot be extended to the free clinic as an entity. Rather, coverage is only available to eligible and approved free clinic-sponsored individuals. BPHC notes that the estimated number of responses per respondent has increased from one to three annually due to sponsoring free clinics submitting a greater number of supplemental applications on behalf of individuals who on-board throughout a calendar year.

Likely Respondents: Respondents include free clinics seeking deemed PHS employee status on behalf of their sponsored individuals for purposes of FTCA coverage.

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 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
FTCA Program Deeming Application for Free Clinics	228	3	684	2	1,368
Total	228	3	684	2	1,368

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2017–21488 Filed 10–4–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

''Partnering to Prevent Hypoglycemia'' Listening Session

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of Disease Prevention and Health Promotion (ODPHP) is hosting a listening session titled, ''Partnering to Prevent Hypoglycemia.'' The purpose of this

listening session is to exchange information about the public health importance of hypoglycemia, and discuss federal efforts to reduce preventable hypoglycemia from diabetes medications. The Department of Health and Human Services invites public and private professionals, organizations, and consumer representatives to register to attend this listening session at *https://health.gov/news/.*

DATES: The public listening session will be held on November 1, 2017, from 9:00 a.m. to 4:00 p.m. EDT.

ADDRESSES: The meeting will only be accessible by attendance in-person. For in-person participants, the meeting will take place in the Hubert H. Humphrey Building, Room 800, 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ndome Essoka, Health Policy Fellow, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite LL100, Rockville, MD 20852, phone: 240–453–8217, email: *ndome.essoka@hhs.gov* or *OHQ@hhs.gov* (please indicate in the subject line: Partnering to Prevent Hypoglycemia).

SUPPLEMENTARY INFORMATION: In September 2012, in response to heightened awareness of the contribution of adverse drug events (ADEs) to the burden of health care-related harm and costs, the Office of the Assistant Secretary for Health (OASH) marshaled the wide-ranging and diverse resources of federal partners to form an extensive interagency partnership, the Federal Interagency Steering Committee and Workgroups for Adverse Drug Events, whose goals would be to develop the ADE Action Plan, as well as identify measures to track national progress in reducing ADEs and targets to meet based on those measures.

ODPHP, in conjunction with the Federal Interagency Steering Committee and three Federal Interagency Workgroups, developed and released the final ADE Action Plan in 2014. The ADE Action Plan seeks to engage all stakeholders in coordinated efforts to reduce ADEs that are not only clinically significant but largely preventable. Inpatient and outpatient use of anticoagulants, diabetes agents, and opioid analgesics (with specific focus on ADEs from therapeutic use of opioids) contribute to the reason why ADEs account for the greatest number of measurable harms. The ADE Action Plan identifies the federal government's highest priority strategies and opportunities for advancement, which will have the greatest impact on reducing ADEs. Implementation of these strategies is expected to result in safer and higher quality health care services, reduced health care costs, informed and engaged consumers and, ultimately, improved health outcomes. For more information on the ADE Action Plan, visit *https://health.gov/hcq/ade-action-plan.asp.*

Purpose of the Meeting: ODPHP is hosting a listening session titled, ''Reducing Preventable Hypoglycemia.'' The purpose of this listening session is to exchange information about the public health importance of hypoglycemia, and discuss federal efforts to reduce preventable hypoglycemia from diabetes medications. This information may assist ODPHP and federal partners in identifying how patients and providers are affected by hypoglycemia, where gaps in knowledge exist, and how information can be better disseminated.

Meeting Registration: There is no registration fee to attend the public listening session. Early registration is recommended because seating is limited, and registration will be on a first-come, first-served basis. There will be no onsite registration. Persons interested in attending this listening session must register online at *https://health.gov/news/.* For those without Internet access, please contact Ndome Essoka (see **FOR FURTHER INFORMATION CONTACT**) to register. If you need special accommodations due to a disability, please contact Ndome Essoka at least seven days in advance.

Dated: September 29, 2017.

Don Wright,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 2017–21503 Filed 10–4–17; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. During the October meeting, the Advisory Council will welcome its new members and invite them to share their experiences and where they see the Council going over the length of their terms. The Advisory Council will also spend some time discussing the process of developing recommendations and how those recommendations relate to the National Plan. The Council will then spend much of the meeting discussing the National Research Summit on Care, Services, and Supports for Persons with Dementia and Their Caregivers, held on October 16–17.

DATES: The meeting will be held on October 27, 2017 from 9:00 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held in Room 800 in the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Comments: Time is allocated in the afternoon on the agenda to hear public comments. The time for oral comments will be limited to two (2) minutes per individual. In lieu of oral comments, formal written comments may be submitted for the record to Rohini Khillan, OASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Rohini Khillan (202) 690–5932, *rohini.khillan@hhs.gov. Note:* Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''October 27 Meeting Attendance'' in the Subject line by Tuesday, October 17, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

Topics of the Meeting: During the October meeting, the Advisory Council will welcome its new members and invite them to share their experiences

and where they see the Council going over the length of their terms. The Advisory Council will also spend some time discussing the process of developing recommendations and how those recommendations relate to the National Plan. The Council will then spend much of the meeting discussing the National Research Summit on Care, Services, and Supports for Persons with Dementia and Their Caregivers, held on October 16–17.

Procedure and Agenda: This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live*.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 22, 2017.

John R. Graham,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2017–21399 Filed 10–4–17; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Appointment to the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS), Office of Minority Health (OMH), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Health (hereafter referred to as the ''Committee or ACMH''). In accordance with Public Law 105–392, the Committee provides advice to the Deputy Assistant Secretary for Minority Health on improving the health of racial and ethnic minority groups, and on the development of goals and specific program activities of OMH designed to improve the health status and outcomes of racial and ethnic minorities. Nominations of qualified candidates are being sought to fill vacancies on the Committee.

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on January 3, 2018, at the address listed below.

ADDRESSES: All nominations should be mailed to Dr. Minh Wendt, Designated Federal Officer, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dr. Minh Wendt, Designated Federal Officer, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–8222; fax: 240–453–8223.

A copy of the ACMH charter and list of the current membership can be obtained by contacting Dr. Wendt or by accessing the Web site managed by OMH at *www.minorityhealth.hhs.gov.* Information about ACMH activities can be found on the OMH Web site under the heading About OMH.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 105–392, the Secretary of Health and Human Services established the ACMH. The Committee provides advice to the Deputy Assistant Secretary for Minority Health in carrying out the duties stipulated under Public Law 105–392. This includes providing advice on improving the health of racial and ethnic minority populations and in the development of goals and specific program activities of OMH, which are to:

(1) Establish short-range and long-range goals and objectives and coordinate all other activities within the Public Health Service that relate to disease prevention, health promotion, service delivery, and research impacting racial and ethnic minority populations;

(2) Enter into interagency agreements with other agencies of the Public Health Service;

(3) Support research, demonstrations, and evaluations to test new and innovative models;

(4) Increase knowledge and understanding of health risk factors;

(5) Develop mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including individuals who are members of racial or ethnic minority groups;

(6) Ensure that the National Center for Health Statistics collects data on the health status of each minority group;

(7) Enter into contracts with public and non-profit private providers of primary health services for the purpose of increasing the access of individuals who lack proficiency in speaking the English language by developing and carrying out programs to provide bilingual or interpretive services;

(8) Support a national minority health resource center which provides resources to the public such as information services and assistance in capacity building;

(9) Carry out programs to improve access to health care services for individuals with limited proficiency in speaking the English language; and

(10) Advise in matters related to the development, implementation, and evaluation of health professions education in decreasing disparities in health care outcomes, including cultural competency as a method of eliminating health disparities.

Management and support services for the ACMH are provided by OMH.

Nominations: The Committee is composed of 12 voting members. The Committee composition also can include non-voting *ex officio* members. This announcement is seeking nominations for voting members. Voting members of the Committee are appointed by the Secretary from individuals who are not officers or employees of the federal government and who have expertise regarding issues of minority health. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise working on issues impacting the health of racial and ethnic minority populations. The Committee charter stipulates that the racial and ethnic minority groups shall be equally represented on the Committee membership. ACMH is comprised of members who represent the health interest of Hispanics/Latinos; Blacks/African Americans; American Indians and Alaska Natives; and/or Asian Americans, Native Hawaiians, and other Pacific Islanders.

There are a total of four impending vacancies on the Committee: Three vacancies on the ACMH that impact the representation for the health interests of Hispanics/Latinos and one vacancy that impacts the representation of Asian Americans, Native Hawaiians, and other Pacific Islanders. OMH is particularly seeking nominations for individuals who can represent the health interests of these racial and ethnic minority groups. Nominations that are received for individuals to represent other racial and ethnic minority groups also will be accepted. These applications will be retained in files that are maintained by OMH on potential candidates to be considered for the ACMH.

Professional/Technical Expertise: Nominees must have expertise in issues

of minority health. In addition, it is desirable that nominees have:

(1) Expertise in developing or contributing to the development of science-based or evidence-based health policies and/or programs. This expertise may include experience in the analysis, evaluation, and interpretation of federal/state health or regulatory policy;

(2) Involvement in national, state, regional, tribal, and/or local efforts to improve the health status or outcomes among racial and ethnic minority populations;

(3) Educational achievement, professional certification(s) in health-related fields (*e.g.,* health professions, allied health, behavioral health, public health, health policy, health administration/management, etc.), and professional experience that will support ability to give expert advice on issues related to improving minority health and eliminating racial and ethnic health disparities;

(4) Expertise in population level health data for racial and ethnic minority groups. This expertise may include survey, administrative, and/or clinical data;

(5) Knowledge and experience in health care systems, cultural and linguistic competency, social determinants of health, evidence-based research, data collection (*e.g.,* federal, state, tribal, or local data collection), or health promotion and disease prevention;

(6) Nationally recognized via peer-reviewed publications, professional awards, advanced credentials, or involvement in national professional organizations.

Requirements for Nomination Submission: Nominations should be typewritten (one nomination per nominator). Nomination package should include: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone number, and email address; (3) the nominee's curriculum vitae which should not exceed 10 pages; and (4) a summary of the nominee's experience and qualification relative to the mandatory professional and technical criteria listed above. Federal employees should not be nominated for consideration of appointment to this Committee.

Individuals selected for appointment to the Committee shall be invited to serve a four-year term. Committee members will receive a stipend for attending Committee meetings and conducting other business in the interest of the Committee, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of a HHS federal advisory committee is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, gender, racial and ethnic and minority groups, and the disabled are given consideration for membership on HHS federal advisory committees. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of ACMH and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee; therefore, individuals selected for nomination will be required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Individuals selected to serve on the ACMH through the nomination process will be posted on the OMH Web site once selections have been made.

Authority: 42 U.S.C. 300u–6, Section 1707 of the Public Health Service Act, as amended. The Advisory Committee is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 29, 2017.

Minh Wendt,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2017–21500 Filed 10–4–17; 8:45 am]

BILLING CODE 4150–29–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, 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: Optic Neuropathies, Eye Infection and Cornea Injuries: Mechanism of Disease and Regeneration.

Date: October 24, 2017.

Time: 10:30 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 (Telephone Conference Call).

Contact Person: Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.

Date: October 31, 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: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gut Immunity and Microbiome.

Date: October 31, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Meenakshisundar Ananthanarayanan, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, Bethesda, MD 20892, 301–827–6281, *ananth.ananthanarayanan@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Toxicology.

Date: October 31, 2017.

Time: 1:00 p.m. to 3:30 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: Jonathan K Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@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: September 29, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21384 Filed 10–4–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Advanced Laboratories for Accelerating the Reach and Impact Research Centers (P50).

Date: October 27, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Fellowships and Dissertation Grants.

Date: October 31, 2017.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants; National Institutes of Health, HHS)

Dated: September 29, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21393 Filed 10–4–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Early Stage Testing of Pharmacologic or Device-based Interventions for the Treatment of Mental Disorders.

Date: October 25, 2017.

Time: 9:30 a.m. to 12:00 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: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Research Education Programs (R25).

Date: October 25, 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: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Silvio O. Conte Centers for Basic Neuroscience or Translational Mental Health Research (P50).

Date: November 3, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants; National Institutes of Health, HHS)

Dated: September 29, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21392 Filed 10–4–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 General Medical Sciences Special Emphasis Panel; Review of Support of Competitive Research (SCORE) Award Applications.

Date: November 6, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, Washington, DC 20015.

Contact Person: Saraswathy Seetharam, Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2763, *seetharams@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 29, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21389 Filed 10–4–17; 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, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; T–32 Training Grants Review Meeting.

Date: October 23, 2017.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, 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: September 29, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21388 Filed 10–4–17; 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, 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: Health Informatics and Biostatistical Methods.

Date: October 20, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rafael Semansky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 2040M, Bethesda, MD 20892, 301–496–5749, *semanskyrm@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: October 26–27, 2017.

Time: 8:00 a.m. to 5:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892, 301–435–1116, *kozelp@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: October 27, 2017.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ying-Yee Kong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5185, Bethesda, MD 20892, *ying-yee.kong@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Acute Brain Injury and Recovery.

Date: October 30, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892–7846, 301–435–1254, *yakovleva@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pulmonary Diseases.

Date: October 31–November 1, 2017.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: November 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

Date: November 1, 2017.

Time: 11:00 a.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: Jana Drgonova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–827–2549, *jdrgonova@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 29, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21385 Filed 10–4–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–3 for Provocative Questions.

Date: November 3, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W112, Bethesda, MD 20892–9750, 240–276–5864, *jennifer.schiltz@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; HIV/AIDS and the Tumor Niche.

Date: November 7, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Timothy C. Meeker, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W606, Bethesda, MD 20892–9750, 240–276–6464, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Lasker Clinical Scholars Review.

Date: November 14, 2017.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Caron A. Lyman, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Multilevel Interventions in Cancer Care Delivery.

Date: November 14, 2017.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W104, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W104, Bethesda, MD 20892–9750, 240–276–6342 *choe@mail.nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel; Pediatric Early Phase Clinical Trials Network.

Date: November 15, 2017.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W264, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Ombretta Salvucci, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–9750, 240–276–7286, *salvucco@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 29, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21386 Filed 10–4–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—B, Review of T32 applications.

Date: November 13–14, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, 45 Center Drive, Rm 3AN18A, Bethesda, MD 20814, (301) 435–0965, *newmanla2@mail.nih.gov*.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—A, Review of T32 applications.

Date: November 16–17, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 29, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21390 Filed 10–4–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, November 07, 2017, 2:00 p.m. to November 08, 2017, 6:00 p.m., Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD, 20852 which was published in the **Federal Register** on September 22, 2017, 82 FR 44430.

This meeting notice is amended to change the meeting location to the DoubleTree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: September 29, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21387 Filed 10–4–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–0912]

Area Maritime Security Advisory Committee (AMSC), Eastern Great Lakes and Regional Sub-Committee Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: This notice requests individuals interested in serving on the Area Maritime Security Committee (AMSC), Eastern Great Lakes, and the four regional sub-committees: Northeast Ohio Region, Northwestern Pennsylvania Region, Western New York Region, and Eastern New York Region submit their applications for membership to the Federal Maritime Security Coordinator (FMSC), Buffalo. The Committee assists the FMSC, Buffalo, in developing, reviewing, and updating the Area Maritime Security Plan for their area of responsibility.

DATES: Requests for membership should reach the FMSC, Buffalo, on November 6, 2017.

ADDRESSES: Applications for membership should be submitted to the following address: Federal Maritime Security Coordinator, Buffalo, Attention: CDR Karen Jones, 1 Fuhrmann Boulevard, Buffalo, NY 14203–3189.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application, or about the AMSC in general, contact:

For the Northeast Ohio Region Sub-Committee Executive Coordinator: Mr. Peter Killmer at 216–937–0136.

For the Northwestern Pennsylvania Region Sub-Committee Executive Coordinator: Mr. Joseph Fetscher at 216–937–0126.

For the Western New York Region Sub-Committee Executive Coordinator: Mr. Shawn Larrabee at 716–843–9549.

For the Eastern New York Region Sub-Committee Executive Coordinator: Mr. Ralph Kring at 315–343–1217.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C.; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMSCs from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App.2). The AMSCs shall assist the FMSC in the development, review, update, and exercising of the Area Maritime Security Plan for their area of responsibility. Such matters may include, but are not limited to: Identifying critical port infrastructure and operations; identifying risks (threats, vulnerabilities, and consequences); determining mitigation strategies and implementation methods; developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and providing advice to, and assisting the FMSC in developing and maintaining the Area Maritime Security Plan.

AMSC Membership

Members of the AMSC should have at least five years of expertise related to maritime or port security operations. We are seeking to fill the following vacancies with this submission:

(A) Northeast Ohio Region Sub-Committee (no new members): No applications are being taken for this Sub-Committee at this time.

(B) Northwestern Pennsylvania Region Sub-Committee (no new members): No applications are being taken for this Sub-Committee at this time.

(C) Western New York Region Sub-Committee (1 member): Executive Board member to serve as Chairperson of the Sub-Committee and concurrently as member of the Eastern Great Lakes AMSC when so convened by the FMSC.

(D) Eastern New York Region Sub-Committee (1 member): Executive Board member to serve as Vice Chairperson of the Sub-Committee and concurrently as member of the Eastern Great Lakes AMSC when so convened by the FMSC.

Applicants may be required to pass an appropriate security background check prior to appointment to the Committee. Applicants must register with and remain active as Coast Guard HOMEPORT users if appointed. Members' terms of office will be for five years; however, a member is eligible to serve additional terms of office. Members will not receive any salary or other compensation for their service on an AMSC. In accordance with 33 CFR 103, members may be selected from the Federal, Territorial, or Tribal governments; the State government and political subdivisions of the State; local public safety, crisis management, and emergency response agencies; law enforcement and security organizations; maritime industry, including labor; other port stakeholders having a special competence in maritime security; and port stakeholders affected by security practices and policies.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Request for Applications

Those seeking membership are not required to submit formal applications

to the local FMSC, however, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: September 22, 2017.

J. S. Dufresne,

Captain, U.S. Coast Guard, Federal Maritime Security Coordinator, Buffalo.

[FR Doc. 2017–21486 Filed 10–4–17; 8:45 am]

BILLING CODE 9110–04–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1185 (Review)]

Steel Nails From the United Arab Emirates

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on steel nails from the United Arab Emirates would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on April 3, 2017 (82 FR 16229) and determined on July 7, 2017 that it would conduct an expedited review (82 FR 37112, August 8, 2017).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on September 29, 2017. The views of the Commission are contained in USITC Publication 4729 (September 2017), entitled *Steel Nails from the United Arab Emirates:* Investigation No. 731–TA–1185 (Review).

By order of the Commission.

Issued: September 29, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–21427 Filed 10–4–17; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1010]

Certain Semiconductor Devices, Semiconductor Packages, and Products Containing Same: Commission Determination To Review in Part a Final Initial Determination Finding in Part a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; and Denial of a Motion To Modify the Administrative Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''final ID'') issued by the presiding administrative law judge (''ALJ'') on June 30, 2017, finding in part a violation of section 337 of the Tariff Act of 1930, in the above-captioned investigation. The Commission has also determined to deny the motion filed on August 1, 2017, to amend the administrative protective order. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 24, 2016, based on a complaint filed on behalf of Tessera Technologies, Inc.; Tessera, Inc.; and Invensas Corporation, all of San Jose, California (collectively, ''Tessera''). 81 FR 41344 (Jun. 24, 2016). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent No. 6,856,007 (''the '007 patent''); U.S. Patent No. 6,849,946 (''the '946 patent''); and U.S. Patent No. 6,133,136 (''the '136 patent''). The complaint further alleged that a domestic industry exists. The Commission's notice of investigation named 24 respondents. Those respondents are Broadcom Limited of Singapore and Broadcom Corporation of Irvine, California (collectively, ''Broadcom''), and 22 manufacturers and importers of products containing Broadcom's semiconductor devices: Avago Technologies Limited of Singapore, and Avago Technologies U.S. Inc. of San Jose, California (collectively, ''Avago''); Arista Networks, Inc. of Santa Clara, California; ARRIS International plc, ARRIS Group, Inc., ARRIS Solutions, Inc., ARRIS Enterprises, and Pace Ltd., all of Suwanee, Georgia, as well as Pace Americas LLC and Pace USA LLC, both of Boca Raton, Florida, and ARRIS Technology, Inc. of Horsham, Pennsylvania (collectively, ''ARRIS''); ASUSTek Computer, Inc. of Taipei, Taiwan, and ASUS Computer International of Fremont, California (collectively, ''ASUS''); Comcast Cable Communications, LLC, Comcast Cable Communications Management, LLC, and Comcast Business Communications, LLC, each of Philadelphia, Pennsylvania (collectively, ''Comcast''); HTC Corporation of Taoyuan, Taiwan and HTC America Inc. of Bellevue, Washington (collectively, ''HTC''); NETGEAR, Inc. of San Jose, California; Technicolor S.A. of Issy-Les-Moulineaux, France, as well as Technicolor USA, Inc. and Technicolor Connected Home USA LLC, both of Indianapolis, Indiana (collectively, ''Technicolor''). The Office of Unfair Import Investigations is not participating in the investigation.

On June 30, 2017, the presiding administrative law judge issued the final ID. The final ID finds a violation of section 337 as to claims 16, 17, 20, and 22 of the '946 patent. ID at 262. The final ID finds that for claims 1, 2, 11, 12, 16, 24–26, and 34 of the '136 patent, the claims are infringed and not invalid, but that the existence of a domestic industry was not shown. *Id.* at 262–63. For the '007 patent, the final ID finds that infringement was shown only as to

claim 18, but that for all of the asserted claims (claims 13, 16, and 18), the claims are invalid, and a domestic industry was not shown. *Id.* at 263.

On July 17, 2017, Tessera and the respondents each filed a petition for Commission review of the ID. On July 25, 2017, each responded to the other's petition. In addition, Tessera, Broadcom, Comcast, Arista, ARRIS, ASUS, HTC, Netgear, and Technicolor each filed statements on the public interest. A number of public interest submissions were submitted by the public. In particular, the Commission received submissions from: Rep. Susan Brooks (R–IN); Rep. Tony Cardenas (D–CA); Rep. Darrell Issa (R–CA); Rep. Doug Lamborn (R–CO); Rep. Edward Royce (R–CA); Rep. Mimi Walters (R–CA); Rep. Rod Woodall (R–GA); Under Armour, Inc.; Sprint Spectrum LLC; Cable Television Laboratories, Inc.; Public Knowledge and the Open Technology Institute at New America; the Multimedia over Coax Alliance; the WiFi Alliance; and the Innovation Alliance.

On August 1, 2017, the respondents moved to modify the administrative protective order (''APO'') issued in this investigation (Order No. 1 as modified by Order Nos. 38 and 42). The Commission has determined to deny that motion, and to deny the respondents' motion to file a reply. As the Commission recently reiterated, a supplier of confidential business information ''may consent to the disclosure of their confidential business information to persons other than those qualified under the protective order to receive confidential business information.'' *Certain Digital Video Receivers & Hardware & Software Components Thereof,* Inv. No. 337–TA–1001, Comm'n Order at 2 (June 30, 2017); *accord Certain Doxorubicin & Preparations Containing Same,* Inv. No. 337–TA–300, Comm'n Mem. Op., 1991 WL 788724, at * 6 (June 3, 1991). However, neither the supplier of information (here, International Business Machines Corporation), nor a party (here, the respondents) may seek to amend the APO to allow only carefully circumscribed usage of information in certain specified European patent proceedings. To modify the APO in this manner would require the Commission to police the use of information outside the scope of Commission proceedings, which would be unduly burdensome for the Commission and unfair to other tribunals whose proceedings may be governed by different laws and rules.

Having reviewed the record of the investigation, including the ALJ's orders and the final ID, as well as the parties' petitions and responses thereto, the Commission has determined to review the final ID in part.

As to the '007 patent, the Commission has determined as follows. The Commission has determined to review, and on review, to take no position on the economic prong of the domestic industry requirement, and infringement of claim 18. The Commission has determined not to review the remainder of the ID as to the '007 patent, including the ID's findings concerning anticipation by, or obviousness over, the prior art.

As to the '946 patent and '136 patent, the Commission has determined not to review the ID's findings concerning the level of skill in the art. The Commission has determined to review all other issues for the '946 patent and the '136 patent.

In connection with the Commission's review, the Commission will rely upon the issues and arguments presented in the parties' petitions and responses thereto. The Commission notes that ''[a]ny issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination.'' 19 CFR 210.43(b)(2).

The parties are asked to provide additional briefing on the following issues, with reference to the applicable law and the existing evidentiary record. For each argument presented, the parties' submissions should set forth whether and/or how that argument was presented and preserved in the proceedings before the ALJ, in conformity with the ALJ's Ground Rules (Order No. 2), with citations to the record.

a. For the '946 patent, with regard to the construction of ''trench(es)'':

i. Please explain the meaning of the claim term ''trench(es)'' to persons skilled in the art in view of the intrinsic evidence of the '946 patent. In the context of the '946 patent, does the claim term ''trench(es)'' describe a specific shape-related property, such as elongated? Please discuss the relevance, if any, of *Lexington Luminance LLC* v. *Amazon.com Inc.,* 601 Fed. App'x 963, 970–71 (Fed. Cir. 2015), and any other cases believed to be relevant to understanding the meaning of ''trench(es)'' to a skilled artisan for the '946 patent.

ii. Please explain the relevance, if any, of the definition of ''trench'' in the Applied Materials Glossary as a ''groove etched in a wafer to be used as part of a device structure.'' Applied Materials Glossary, *http://www.appliedmaterials.com/resources/glossary* (last visited Sept. 26, 2017). Is this meaning consistent with the '946 patent claims, specification, and prosecution history as understood by skilled artisans?

iii. If the Commission were to construe ''trench'' as ''a long, narrow ditch,'' or as a ''groove etched in a wafer to be used as part of a device structure,'' please explain whether any accused products or domestic industry products (and if so, specifically identify which) literally infringe or practice the asserted claims, and why. Under those same constructions, please explain whether any accused products or domestic industry products (and if so, specifically identify which), infringe or practice the asserted claims under the doctrine of equivalents, and why.

b. With regard to the ALJ's decision to allow Tessera to rely upon GDS files to demonstrate infringement of the '946 patent, please explain how, if at all, the respondents were prejudiced by that decision. Please identify the evidence or arguments proffered in proceedings before the ALJ or in their petition for Commission review by the respondents in support of that alleged prejudice.

c. For the '946 patent, in connection with the IBM PowerPC 750, please explain:

i. The relevance, if any, of the die markings on the chips examined in the ICE report (RX–668) and the SI Report (RX–0499C).

ii. Whether the IBM PowerPC 750 anticipates the asserted dependent claims under the ID's construction of ''trench.''

d. With regard to the exhaustion issue for the '946 patent:

i. Please explain whether the accused features (including dummy trenches and dummy conductors) were part of a design supplied by Broadcom to [CBI REDACTED] or were added by [CBI REDACTED] itself, and the resulting implications for the Commission's analysis of [CBI REDACTED] in ¶ 14 of JX–501C. If the accused features (including dummy trenches and dummy conductors) were part of a design supplied by Broadcom to [CBI REDACTED], please also explain whether such features were inserted into the design with [CBI REDACTED] in ¶ 14 of JX–501C.

ii. Please discuss the relevant law of exhaustion and first sale as it applies to the relationship between a fabless semiconductor company (Broadcom) and a fabricator [CBI REDACTED] who manufactures the fabless company's own chips. Please address the specific provisions of the pertinent agreement, and the relationship between those provisions and the law of exhaustion

and first sale. Please also discuss the relevance, if any, the Federal Circuit decision in *Medicines Company* v. *Hospira, Inc.,* 827 F.3d 1363, 1373–74 (Fed. Cir. 2016) (en banc) concerning commercial sales, and any related cases. Please address the specific provisions of the pertinent agreement or agreements alleged to give rise to exhaustion, and the relationship between those provisions and the law of exhaustion and first sale.

e. With regard to infringement of the '136 patent, please explain whether Broadcom or its fabricators produced documentary evidence that demonstrates the cross-sectional structure of the accused interconnect structures in all of the accused products, including the locations of the layer of copper, barrier layer, layer of AlCu, and pad-limiting layer of claim 1 and the layer of copper, layer of isolation, barrier layer, layer of AlCu, and pad limiting layer of claim 11. To the extent that such evidence does not exist in this field of technology, please explain. To the extent that it does exist and was not produced, please explain. To the extent that it does exist and is part of the record of this investigation, please explain its pertinence, if any, to the ID's findings concerning infringement.

f. For the '136 patent, please explain whether each of the asserted claims is obvious over Crostini claim 1, under the relevant law for double patenting, if the Commission finds that ''the claimed structure solder 38 is formed directly atop the AI contact'' statement constitutes clear prosecution disavowal.

g. With regard to the exhaustion issue for the '136 patent:

i. Please explain whether, on or before May 23, 2016 (the date the complaint was filed in the instant Commission investigation), the party alleged to be licensed to the '136 patent was an [CBI REDACTED] as defined in section 5 of CX–943C (TSRA1010–00004931).

ii. Please discuss the relevant law of exhaustion and first sale as it applies to the relationship between a fabless semiconductor company (Broadcom) and a company [CBI REDACTED] who provides outsourced semiconductor assembly and testing for the fabless company's own chips. Please also discuss the relevance, if any, the Federal Circuit decision in *Medicines Company* v. *Hospira, Inc.,* 827 F.3d 1363, 1373–74 (Fed. Cir. 2016) (en banc) concerning commercial sales, and any related cases. Please address the specific provisions of the pertinent agreement or agreements alleged to give rise to exhaustion, and the relationship between those provisions and the law of exhaustion and first sale.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. Public interest submissions should be mindful of the ALJ's statement that the ''parties have made no effort in their briefing to classify the 2,800 accused products in a way that would rationalize different treatment for different categories of products.'' ID at 258. The Commission wishes to develop the record, as to, *inter alia,* the following issues:

(1) Which specific products of the respondents most directly implicate the Commission's public interest factors? *See* 19 U.S.C. 1337(d)(1), (f)(1) (''the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers'').

(2) How are the Commission's public interest factors implicated on a patent-claim-by-patent-claim basis for the asserted claims of the '946 patent and the '136 patent?

(3) How, if at all, may public interest concerns be accommodated by the tailoring of any remedial orders, including delaying the implementation of any Commission remedial orders as to specific products for a specific period of time?

Any person asserting that the public interest should be accommodated by tailoring any Commission remedial order as to a subset of the accused products (*e.g.,* to delay implementation of a Commission remedial order as to specific accused products) shall append to its submission one or more declarations in support of those facts in compliance with 28 U.S.C. 1746. Each declaration shall be made on personal knowledge, and shall show affirmatively that the declarant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in a declaration shall be attached thereto or served therewith.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

The parties' submissions on the issues under review should not exceed 60 pages per side. Reply submissions on the issues under review should not exceed 40 pages per side. The respondents may allocate the page limits for the issues under review amongst themselves as they see fit. The page limits above are exclusive to exhibits, but parties are not to circumvent the page limits by incorporating material by reference from the exhibits or from the record.

The parties' opening and reply submissions on the issues of remedy, the public interest and bonding are to be

filed separately from the submissions on the issues under review and are not governed by the page limitations recited above. The complainants' opening submission on the issues of remedy, the public interest and bonding is to include proposed remedial orders for the Commission's consideration; the date that the asserted patents expire; the HTSUS numbers under which the accused products are imported; and the names of known importers of the products at issue in this investigation.

Written submissions by the parties and the public must be filed no later than close of business on Friday, October 13, 2017. Reply submissions by the parties and the public must be filed no later than the close of business on Monday, October 23, 2017. No further submissions will be permitted unless otherwise ordered by the Commission.

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 section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1010'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). 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 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, solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 29, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–21426 Filed 10–4–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–576–577 and 731–TA–1362–1367 (Final)]

Cold-Drawn Mechanical Tubing From China, Germany, India, Italy, Korea, and Switzerland; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–576–577 and 731–TA–1362–1367 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of cold-drawn mechanical tubing from China, Germany, India, Italy, Korea, and Switzerland, provided for in subheadings 7304.31.30, 7304.31.60, 7304.51.10, 7304.51.50, 7306.30.50, and 7306.50.50 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be subsidized by the Governments of China and India. Determinations with respect to imports of cold-drawn mechanical tubing alleged to be sold at less than fair value are pending.

DATES: September 25, 2017.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, the Department of Commerce has defined the subject merchandise as cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, in actual outside diameters less than 331 mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6

(ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which:

(1) Iron predominates, by weight, over each of the other contained elements; and

(2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestruction testing, deburring or chamfering, remains within the scope of the investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual-or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Background.—The final phase of these investigations is being scheduled pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and India of cold-drawn mechanical tubing. The investigations were requested in petitions filed on April 19, 2017, by ArcelorMittal Tubular Products, Shelby, Ohio; Michigan Seamless Tube, LLC, South Lyon, Michigan; PTC Alliance Corp., Wexford, Pennsylvania; Webco Industries, Inc., Sand Springs, Oklahoma; and Zekelman Industries, Inc., Farrell, Pennsylvania.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 21, 2017, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final

phase of these investigations beginning at 9:30 a.m. on Wednesday, December 6, 2017, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 1, 2017. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on December 4, 2017, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 29, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 12, 2017. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before December 12, 2017. On December 29, 2017, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 3, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 29, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–21428 Filed 10–4–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–865–867 (Third Review)]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 5, 2017.

FOR FURTHER INFORMATION CONTACT: Amanda Lawrence (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 5, 2017, the Commission determined that the domestic interested party group response to its notice of institution (82 FR 25324, June 1, 2017) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate for all reviews. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on November 2, 2017, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted on behalf of Core Pipe Products, Inc., Shaw Alloying Piping Products, LLC, and Taylor Forge Stainless to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

reviews. Comments are due on or before November 17, 2017 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by November 17, 2017. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 29, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–21429 Filed 10–4–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Warren B. Dailey, M.D.; Decision and Order

On February 7, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Warren B. Dailey, M.D. (Registrant), of Houston, Texas. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, pursuant to 21 U.S.C. 824(a)(3) and (5), on two grounds: (1) That he does not have authority to handle controlled substances in Texas, the State in which he is registered with the Agency; and (2) he has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42. GX 2 (Order to Show Cause), at 1.

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is registered as a practitioner in schedules II through V, under Certificate of Registration No. AD9639038, at the registered address of 2305 Southmore, Houston, Texas. *Id.* The Order alleged that Registrant's registration expires by its terms on June 30, 2018. *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order specifically alleged that ''[o]n October 12, 2016, the Texas Medical Board issued an Order of Suspension by Operation of Law, suspending [Registrant's] Texas Medical License . . . based on [his] felony conviction on March 30, 2016 . . . for health care fraud.'' *Id.* The Show Cause Order then alleged that Registrant is ''currently without authority to practice medicine or handle controlled substances in the State of Texas, the [S]tate in which he registered with'' the Agency, thus subjecting his registration to revocation. *Id.* at (citing 21 U.S.C. 824(a)(3); other citations omitted).

The Show Cause Order also alleged that on December 30, 2016, the Office of Inspector General, U.S. Department of Health and Human Services (HHS IG), issued a letter to Registrant ''excluding [him] from participation in all Federal health care programs based on [his] felony conviction on March 30, 2016, in the U.S. District Court for the Southern District of Texas for health care fraud.'' *Id.* at 2. The Show Cause Order further alleged that ''[t]he exclusion was effective twenty days from the date of the letter and is for a minimum period of twenty years.'' *Id.* The Show Cause Order then asserted that Registrant's ''DEA registration is also subject to revocation based on [his] exclusion from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* (citing 21 U.S.C. 824(a)(5)).

The Show Cause Order notified Registrant of his right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Order also notified Registrant of his right to submit a corrective action plan under 21 U.S.C. 824(c)(2)(C). *Id.* at 3.

On February 7, 2017, the Show Cause Order was mailed to Registrant, via first class mail, addressed to him at his registered address at 2305 Southmore, Houston, Texas. GX 5. Affidavit of Service by DEA Analyst, Office of Chief Counsel. Also, on February 21, 2016, a Diversion Investigator (DI) with the Houston Division Office emailed the Show Cause Order to an attorney, who represented Registrant in the state board proceeding, who accepted service on his behalf. GX 4. In his email, the attorney represented that he was ''accepting service upon'' Registrant. *Id.* (copy of email between DI and attorney accepting service on Registrant.)

On April 6, 2017 the Government forwarded a Request for Final Agency Action (RFAA) and an evidentiary record to my Office. On review, I found the Government's attempts at service insufficient. As for the Government's attempt to serve Registrant by mail addressed to his registered address, I found this inadequate because it clearly knew that Registrant had been convicted of multiple federal felony offenses more than a year earlier and was likely incarcerated in a United States Penitentiary. *See Robinson* v. *Hanrahan,* 409 U.S. 38, 40 (1972) (''[T]he State knew that appellant was not at the address to which the notice was mailed . . . since he was at that very time confined in . . . jail. Under these circumstances, it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise appellant of the pendency of the . . . proceedings.''); *see also Jones* v. *Flowers,* 547 U.S. 220, 230 (2006) (citing with approval *Robinson* and noting that its cases ''require[] the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provided notice in the ordinary case'').

I also found the Government's service on the attorney insufficient. In holding so, I explained that the CSA states that ''[b]efore taking action pursuant to [21 U.S.C. 824(a)] . . . the Attorney General *shall serve upon the . . . registrant* an order to show cause why registration should not be . . . revoked[ ] or suspended.'' 21 U.S.C. 824(c) (emphasis added). While I explained that the Agency has found that service on an attorney may satisfy the CSA's requirement that a Show Cause Order be ''serve[d] upon the . . . registrant,'' I noted that the Agency has made clear

that '' [t]he mere relationship between a defendant and his attorney does not, in itself, convey authority to accept service.'' *David M. Lewis,* 78 FR 36951 (2013) (quoting *Harbinson* v. *Commonwealth of Virginia,* 2010 WL 3655980, at *9 (E.D. Va. Aug. 11, 2010) (quoting *Davies* v. *Jobs & Adverts Online, Gmbh,* 94 F.Supp.2d 719, 722 (E.D. Va. 2000))). *See also United States* v. *Ziegler Bolt & Parts Co.,* 111 F.3d 878, 881 (Fed. Cir. 1997); *Grandbouche* v. *Lovell,* 913 F.2d 835, 837 (10th Cir. 1990); *Ransom* v. *Brennan,* 437 F.2d 513, 518–19 (5th Cir. 1971). ''Rather, the party seeking to establish the agency relationship must show ''that the attorney exercised authority beyond the attorney-client relationship, including the power to accept service.'' *Harbinson,* 2010 WL 3655980, at * 9 (quoting *Davies,* 94 F.Supp.2d at 722 (quoting Ziegler, 111 F.3d at 881)).

I further explained that while an attorney's authority to act as an agent for the acceptance of process ''may be implied from surrounding circumstances indicating the intent of'' his client, *In re Focus Media Inc.,* 387 F.3d 1077, 1082 (9th Cir. 2004) (other citation and internal quotations omitted), ''an agent's authority to act cannot be established solely from the agent's actions.'' *Id.* at 1084. ''Rather, the authority must be established by an act of the principal.'' *Id.* (citing *FDIC* v. *Oaklawn Apartments,* 959 F.2d 170, 175 (10th Cir. 1992)). Because the Government offered no evidence of an act by the Registrant establishing that he granted authority to the attorney to accept process on his behalf *in this proceeding,* I found that the Government had not properly served Respondent. *Focus Media,* 387 F.3d at 1084.

Thereafter, the Government reissued the Show Cause Order and on July 17, 2017, a Diversion Investigator mailed the Order by certified mail addressed to Respondent, at the United States Penitentiary in Beaumont, Texas.[1] GX 7. According to the tracking information obtained from the U.S. Postal Service, on July 20, 2017, the mailing was delivered to the Penitentiary. *Id., see also* GX 8. I therefore find that the Government accomplished service on July 20, 2017.

On September 20, 2017, the Government submitted a new Request for Final Agency Action. (Hereinafter, cited as RFFA). Therein, the Government represents that ''Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA regarding the Reissued Order served on him, including the filing of any written statement in lieu of a hearing.'' RFAA, at 2.

Because more than 30 days have now passed since the date of service of the Show Cause Order and that Registrant has not submitted a request for a hearing or a written statement, I find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing. 21 CFR 1301.43(d). I therefore issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. *Id.* § 1301.43(d) & (e). I make the following findings of fact. *Id.* § 1301.43(e).

Findings

Registrant is the holder of DEA Certificate of Registration No. AD9639038, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 2305 Southmore, Houston, Texas. GX 1 (Certification of Registration History). He is also authorized to dispense Suboxone and Subutex as a Data-Waiver practitioner pursuant to the Drug Addiction Treatment Act of 2000 (DATA), for the purpose of treating up to 100 opiate-addicted patients. *Id.; see* 21 U.S.C. 823(g)(2). His registration does not expire until June 30, 2018. *Id.*

On October 12, 2016, the Texas Medical Board (Board) issued an Order of Suspension by Operation of Law, suspending Registrant's Texas Medical License No. F–8454, based on Registrant's felony conviction on March 30, 2016 for health care fraud in the U.S. District Court for the Southern District of Texas.[2] GX 3, at 2. The Board found that on or about March 30, 2016, Registrant was convicted of one count of conspiracy to commit healthcare fraud, two counts of false statements related to healthcare matters, one count of conspiracy to pay and receive healthcare kickbacks, and one count of payment and receipt of healthcare kickbacks. *Id.* at 1–2 (citing 18 U.S.C. 1349, 1035, 371, 2; 42 U.S.C. 1320a–7b(b)(1) and (b)(2)).

The Government provided evidence that the Texas Medical Board Web site shows that Registrant's medical license remained suspended as of September 20, 2017, and according to the Board's Web site, his license remains suspended as of the date of this Decision and Order. GX 9. *See also http://reg.tmb.state.tx.us/OnLineVerif/Phys_ReportVerif_new.asp.* The Board's Order states that the suspension is to remain in effect until superseded by a subsequent Order of the Board. GX 3, at 2. I therefore find that Registrant does not possess authority to dispense controlled substances under the laws of Texas, the State in which he is registered with the Agency.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of Title 21, ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011) (collecting cases), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); see *also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' *Id.* § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled

[1] There is no evidence in the record as to how the DI obtained Registrant's address. However, according to the Bureau of Prisons Inmate Locator (of which I take official notice), Registrant is incarcerated at USP Beaumont. *See* 5 U.S.C. 556(e).

[2] The Board's Disciplinary Panel issued the Order following a hearing on October 7, 2016, at which it considered the Board's Application for Suspension by Operation of Law. GX 3, at 1. While Registrant was provided with notice of the hearing, neither he nor his attorney appeared. *Id.*

substances under the laws of the State in which he practices medicine. *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *see also Frederick Marsh Blanton,* 43 FR 27616 (1978).

Because Registrant is no longer currently authorized to dispense controlled substances in Texas, the State in which he is registered with the Agency, I will order that his registration be revoked.[3] 21 U.S.C. 824(a)(3).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AD9639038 and Data-Waiver Identification No. XD9639038, issued to Warren B. Dailey, M.D., be, and they hereby are, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), I further order that any pending application of Warren B. Dailey, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective November 6, 2017.

Dated: September 27, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–21382 Filed 10–4–17; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–24]

William J. O'Brien, III, D.O.; Decision and Order

On March 13, 2017, the Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to William J. O'Brien, III, D.O. (Respondent), formerly of Levittown, Pennsylvania. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2), on the ground that he ''ha[s] been convicted of a felony relating to controlled substances.'' Show Cause Order, at 1.

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is registered as a practitioner in schedules II through V, under Registration No. BO3937781, at the address of 49 Rolling Lane, Levittown, Pa. *Id.* The Order also alleged that Respondent's registration expires on December 31, 2017. *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order alleged that ''[o]n June 28, 2016, [Respondent was] convicted by a Federal jury of . . . two counts of conspiracy to distribute controlled substances, in violation of 21 U.S.C. 846; 110 counts of distribution of controlled substances (oxycodone, methadone and amphetamine, all [s]chedule II controlled substances), seven counts of distribution of controlled substances (alprazolam, a [s]chedule IV controlled substances, in violation of 21 U.S.C. 841(a)(1); and one count of distribution of controlled substances resulting in death, in violation of 21 U.S.C. 841(a)(1). *Id.* at 1–2. The Show Cause Order also alleged that on October 5, 2016, the judgment was entered against him. *Id.* at 2. The Order then asserted that a ''[c]onviction of a felony related to controlled substances warrants revocation of [his] registration pursuant to 21 U.S.C. 824(a)(2).'' *Id.*

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* The Show Cause Order also notified Respondent of his right to submit a Corrective Action Plan pursuant to 21 U.S.C. 824(c)(2)(C). *Id.* at 2–3.

On March 21, 2017, the Government served the Show Cause Order on Respondent. Notice of Service of Order to Show Cause, at 1. On April 25, 2017, Respondent's hearing request was received by the Office of Administrative Law Judges (OALJ) and assigned to ALJ Charles Wm. Dorman. Hearing Request, at 1.

On May 1, 2017, the ALJ issued an Order for Prehearing Statements. Noting that Respondent's hearing request was received on April 25, 2017 and that DEA's regulation requires that a hearing request be received ''within 30 days after the date of receipt of the'' Show Cause Order to be deemed timely, the ALJ ordered the Government to ''submit evidence showing when it served the'' Order and to file any motion seeking to terminate the proceeding ''based on the timeliness of the . . . hearing request.'' Order for Prehearing Statements, at 1. The ALJ directed the Government to comply with this portion of his order by May 8, 2017. *Id.* The ALJ's Order also directed both parties to file a prehearing statement setting forth their proposed witnesses, a summary of their proposed testimony, and the documentary evidence they intended to introduce. *Id.* at 1–2.

On May 5, 2017, the Government submitted a pleading addressing the timeliness of Respondent's hearing request. Therein, the Government noted that the envelope used by Respondent to mail the hearing request was stamped by the Agency's mailroom as having been received on April 13, 2017. Notice of Service of Order to Show Cause, at 1. The Government therefore did not move to terminate the proceeding based on the timeliness of Respondent's hearing request. *Id.* at 1–2.

Also, on May 5, 2017, the Government moved for summary disposition on two grounds. Mot. for Summ. Disp., at 1. First, the Government noted that subsequent to the issuance of the Show Cause Order, the State of Pennsylvania suspended Respondent's license to practice osteopathic medicine and surgery, and therefore, he has no authority to handle controlled substances in the State in which he is registered. *Id.* at 2–4. As support for this contention, the Government submitted a copy of the State Board of Osteopathic Medicine's Final Order of Automatic Suspension (April 12, 2017). GX 2. The Government argued that because Respondent does not have state authority to dispense controlled substances in Pennsylvania, he ''is not authorized to possess a DEA registration in that [S]tate,'' and therefore, his registration should be revoked. Mot. at 3.

The Government also sought summary disposition on the ground that it is undisputed that Respondent has been convicted of a controlled substance felony. The Government argued that Respondent has been convicted of two counts of conspiracy to distribute controlled substances, 110 counts of unlawful distribution of schedule II controlled substances, seven counts of unlawful distribution of other controlled substances, and one count of distribution of controlled substances resulting in death. *Id.* at 4 (citing 21 U.S.C. 841(a)(1) and 846). As support for this contention, the Government submitted a copy of the Amended Judgment in a Criminal Case which was entered by the United States District

[3] The Show Cause Order also proposed revocation pursuant to 21 U.S.C. 824(a)(5), which provides that a registration may be revoked ''upon a finding that the registrant has been excluded or directed to be excluded from participation in a program pursuant to section 1320a–7(a) of Title 42.'' GX 2, 1–2. While the Show Cause Order alleged that the HHS IG has issued a letter to Registrant excluding him from participation in federal health care programs pursuant to 42 U.S.C. 1320a–7(a), the Government has provided no evidence to support the allegation, and it does not raise this ground in its Request for Final Agency Action. I therefore dismiss the allegation.

Court for the Eastern District of Pennsylvania on October 12, 2016. GX 3. The Government further argued that Respondent's ''[c]onviction of a felony relating to controlled substances subjects [his] registration to revocation pursuant to 21 U.S.C. 824(a)(2).'' Mot. at 5.

Following receipt of the Government's motion, on May 8, 2017, the ALJ issued an Order for Respondent's Reply; the Order directed that Respondent submit his reply by May 19, 2017. Order for Respondent's Reply, at 1. On May 18, 2017, Respondent filed a reply.

In his Reply, Respondent stated that ''[t]he Commonwealth of Pennsylvania granted a continuance of my case until Sept. 18, 2017.'' Reply to Govt.'s Mot. for Summ. Disp., at 1. Respondent further argued that ''[p]ersuant [sic] to 21 U.S.C. 824(a)(2)[,] the judgement [sic] of my conviction IS NOT FINAL UNTIL AFTER THE DIRECT APPEAL HAS BEEN HEARD.'' *Id.* As support for his contention, Respondent cited *Leishman* v. *Associated Wholesale Electric Co.,* 318 U.S. 203 (1943), a case holding that a motion for a district court to amend or make additional findings under Rule 52(b) of the Federal Rules of Civil Procedure deprives a judgment of finality while the motion is pending. Respondent thus argues that it is ''the established rule that if a motion for a new trial, or in this case reversal due to [a] structural defect, the mere making or pendency of the motion destroys the finality of the judgment.'' Reply to Govt.'s Mot. for Summ. Disp., at 2. Respondent also sought a continuance of the proceeding for 120 days. *Id.*

Upon review, the ALJ granted the Government's motion on both grounds. As for the loss of state authority ground, the ALJ correctly applied the Agency's settled rule that ''in order to maintain a DEA registration, a registrant must be currently authorized to handle controlled substances in the jurisdiction in which [he] is registered.'' Order Denying Resp.'s Continuance Request [and] Granting Summary Disposition, at 4. Finding that ''the Board's Order establishes that the Respondent does not currently have a medical license'' and that ''it is undisputed that the Respondent lacks state authorization to handle controlled substances in Pennsylvania, where [he] is registered,'' the ALJ concluded that ''[t]his issue alone is sufficient to warrant revocation of'' his registration. *Id.* at 6.

As for Respondent's numerous convictions, the ALJ rejected Respondent's contention that ''the judgment of any conviction is not final until after the direct appeal has been heard,'' finding his arguments ''unpersuasive and contrary to DEA precedent.'' *Id.* The ALJ further explained that 21 U.S.C. 824(a)(2) ''does not include any language requiring a Respondent to have exhausted all appellate review in order for the conviction to qualify under this provision.'' *Id.* Finding it undisputed that ''Respondent has been convicted of a felony related to controlled substances,'' the ALJ also granted summary disposition on this ground. *Id.* at 7. & n.3 (citing *Richard Jay Blackburn,* 82 FR 18669 (2017) (holding that Government was entitled to summary disposition on allegation that physician materially falsified an application based on its offering of reliable and probative evidence to support allegation when respondent failed to ''respond to the Government's motion'').[1]

Neither party filed exceptions to the ALJ's Summary Disposition Order. On July 11, 2017, the ALJ forwarded the record to my Office for Final Agency Action. Having considered the record in its entirety, I adopt the ALJ's factual findings and legal conclusions with respect to both grounds, as well as his recommended order. I make the following findings.

Findings of Fact

Respondent is an Osteopathic Physician licensed by the Commonwealth of Pennsylvania State Board of Osteopathic Medicine. GX 2, at 1 (Final Order of Automatic Suspension). Respondent is also the holder of DEA Certificate of Registration No. BO3937781, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 49 Rolling Lane, Levittown, Pa. GX 1 (Registration Certificate). Respondent also holds DATA-Waiver Identification No. XO3937781, pursuant to which he is authorized to dispense narcotic controlled substances in schedules III through V, to up to 30 patients, for the purpose of providing maintenance or detoxification treatment. *Id.* Respondent's registration and DATA-Waiver number do not expire until December 31, 2017. *Id.*

On October 12, 2016, the United States District Court issued an amended judgment finding Respondent guilty of two counts of conspiracy to distribute controlled substances, in violation of 21 U.S.C. 846; 110 counts of distribution of controlled substances, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C); seven counts of distribution of controlled substances, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(E); and one count of distribution of controlled substances resulting in death, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). GX 3, at 1–2 (Amended Judgment In a Criminal Case, *United States* v. *O'Brien,* No. DPAE2:15CR000021–001 (E.D. Pa., Oct. 12, 2016)). The court sentenced Respondent to a total term of imprisonment of 360 months. *Id.* at 3.

Based on Respondent's convictions, on March 3, 2017, the Board issued him a Notice and Order of Automatic Suspension which was to become effective on March 23, 2017 unless Respondent requested a hearing. GX 2, at 1 (Final Order of Automatic Suspension). On April 12, 2017, the Board issued a Final Order of Automatic Suspension of his osteopathic license. *Id.*

Discussion

Loss of State Authority Ground

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of Title 21, ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011) (collecting cases), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); see *also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[ ] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . .

[1] The ALJ also denied Respondent's request for a continuance. R.D. 8.

controlled substances under the laws of the State in which he practices.'' *Id.* § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *see also Frederick Marsh Blanton,* 43 FR 27616 (1978).

Based on the Board's Final Order of Automatic Suspension, it is undisputed that Respondent is no longer currently authorized to dispense controlled substances in Pennsylvania, the State in which he is registered with the Agency. Respondent is therefore not entitled to maintain his registration. This provides reason alone to revoke his registration and to deny any pending application for registration in Pennsylvania.[2]

Respondent's Criminal Convictions

Pursuant to 21 U.S.C. 824(a)(2), the Attorney General may also suspend or revoke a registration issued under section 823 of Title 21, ''upon a finding that the registrant . . . has been convicted of a felony under this subchapter'' (the Controlled Substances Act). Here too, it is undisputed that Respondent has been convicted of more than 100 different felony violations of the CSA, including two of counts of conspiracy to distribute controlled substances, 21 U.S.C. 846; 117 counts of distribution of controlled substances, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C) and (b)(1)(E); and one count of distribution of controlled substances resulting in death, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). While Respondent asserts that his convictions are not final because his case is on direct appeal, the District Court has entered the judgment and Respondent, who is currently incarcerated in a United States Penitentiary, points to no order by the Court vacating the judgment.[3] Accordingly, I find that Respondent ''has been convicted of a felony under this subchapter,'' thus subjecting his registration to sanction. 21 U.S.C. 824(a)(2).

In contrast to a practitioner's loss of his state authority, this finding does not mandate the revocation of his registration on this ground and the Agency has held that a conviction is not a *per se* bar to registration (as is the loss of state authority). *See Jeffery M. Freesemann,* 76 FR 60873 n.1 (2011) (citing *The Lawsons,* 72 FR 74334, 74338 (2007)); *Michael S. Moore,* 76 FR 45867 (2011). Here, however, Respondent's criminal conduct, which involves 120 felony convictions for unlawful distribution, including for unlawful distribution resulting in death, is so obviously egregious that revocation is warranted. *See Masters Pharmaceutical, Inc.,* v. *DEA,* 861 F.3d 206, 226 (D.C. Cir. 2017) (recognizing Agency's authority to revoke a registration based on extensive and egregious misconduct even if registrant had accepted responsibility); *see also Hatem Attaya,* 81 FR 8221, 8244 (2016) (''[W]hile proceedings under 21 U.S.C. 823 and 824 are remedial in nature, there are cases in which, notwithstanding a finding that a registrant has credibly accepted responsibility, the misconduct is so egregious and extensive that the protection of the public interest nonetheless warrants the revocation of a registration or the denial of an application.'') (citation omitted).

While ordinarily a respondent who has been convicted of a felony subject to section 824(a)(2) is entitled to present a case as to why his registration should not be revoked (or his application denied), I nonetheless conclude that the ALJ properly granted summary disposition in this matter because there is no issue of any disputed material fact. Here, even ignoring the manifest egregiousness of Respondent's criminal conduct, he has put forward no evidence to show why he can be entrusted with a registration nor raised any contention that he acknowledges his misconduct and has undertaken remedial measures.[4] *See Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (other citations omitted). *Cf.* 10B Charles Allen Wright, *et al., Federal Practice and Procedure Civ.* § 2727.2 (4th ed. April 2017 update) (''If the summary-judgment movant makes out a prima facie case that would entitle him to a judgment as a matter of law if uncontroverted at trial, summary judgment will be granted unless the opposing party offers some competent evidence that could be presented at trial showing that there is a genuine dispute as to a material fact.''). And finally, as the evidence shows that Respondent is only one year into a 30-year term of imprisonment, he has clearly discontinued (even if involuntarily) his professional practice. *Cf.* 21 CFR 1301.52 (''the registration of any person . . . shall terminate . . . if and when such person . . . discontinues business or professional practice''). Thus, even if his state license had not been suspended, his continued registration would violate DEA's longstanding policy barring shelf registrations. *See, e.g., Performance Construction, Inc.,* 67 FR 9993 (2002). Accordingly, I conclude that the ALJ properly granted summary disposition on this ground. I further conclude that Respondent's multiple felony convictions for violating the CSA provide an additional and independent basis for revoking his registration and denying any pending application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and 28 CFR 0.100(b), I order that DEA Certificate of Registration No. BO3937781 and DATA-Waiver Identification No. XO3937781 issued to William J. O'Brien, III, D.O., be, and they hereby are, revoked. I further order that any application of William J. O'Brien, III, D.O. to renew or modify this registration, or for any other DEA registration, be, and it hereby is, denied. This Order is effective immediately.[5]

Dated: September 28, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–21380 Filed 10–4–17; 8:45 am]

BILLING CODE 4410–09–P

[2] While this ground was not cited in the Show Cause Order, the Government provided constitutionally adequate notice that it was also seeking revocation on this basis when it served Respondent with its Motion for Summary Disposition and Respondent had a meaningful opportunity to put forward evidence and contest the issue. *See Hatem Ataya,* 81 FR 8221, 8244–45 (2016).

[3] As for Respondent's reliance on *Leishman* v. *Associated Wholesale Electric Co.,* that case involved a motion for amended findings under Rule 52 of the Federal Rules of Civil Procedure and has no relevance to this matter.

[4] To the contrary, in his various filings, Respondent maintains that various agents ''misle[d] the grand jury to get the original indictment'' and that ''no warrants were issued for 19 videotaped visits.'' Resp.'s Hrng. Req., at 1.

[5] Based on Respondent's numerous convictions, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 9–17]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations

(45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Thursday, October 19, 2017:

10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2017–21613 Filed 10–3–17; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 28, 2017, the Department of Justice lodged a Consent Decree with defendant Aramark Uniform & Career Apparel, LLC (''Aramark'') in the United States District Court for the Southern District of West Virginia, Civil Action No. 3:17–cv–04062. The Consent Decree resolves a claim under Section 107(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a)(2), for past response costs incurred in connection with the release of PCE at the Coyne Textile Services Superfund Site, located in Huntington, West Virginia. The Complaint filed concurrently with the Consent Decree alleges that Aramark, through a predecessor company, owned and operated an industrial laundry business at the Site from 1972 to 1982 that included a dry cleaning process that utilized perchloroethylene (''PERC'' or ''PCE''). The proposed consent decree obligates Aramark to reimburse $1.595 million of the United States' past response costs and provides Aramark a covenant not to sue for past response costs incurred through May 10, 2017. Aramark is performing the work at the Site pursuant to an administrative order and agreement with EPA, which addresses claims under Section 106(a) of CERCLA, 42 U.S.C. 9606(a), at the Site.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Aramark Uniform & Career Apparel, LLC,* Civil Action No. 3:17–cv–04062 (S.D.W. Va.), DJ Ref. No. 90–11–3–11369. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $5.25.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–21394 Filed 10–4–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Information Advisory Council (WIAC)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Workforce Innovation and Opportunity Act of 2014 (WIOA), which amends the Wagner-Peyser Act of 1933, notice is hereby given that the WIAC will meet on November 1 and 2, 2017. The meeting will take place at the Bureau of Labor Statistics (BLS) Janet Norwood Training and Conference Center in Washington, DC. The WIAC was established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended and will act in accordance with the applicable provisions of FACA and its implementing regulation. The meeting will be open to the public.

DATES: The meeting will take place on Wednesday, November 1, and Thursday, November 2, 2017 from 8:30 a.m. to 4:30 p.m. Public statements and requests for special accommodations or to address the Advisory Council must be received by October 23, 2017.

ADDRESSES: The meeting will be held at the BLS Janet Norwood Training and Conference Center, Rooms 7 and 8, in the Postal Square Building at 2 Massachusetts Ave. NE., Washington, DC 20212.

FOR FURTHER INFORMATION CONTACT: Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4510, 200 Constitution Ave. NW., Washington, DC 20210; Telephone: 202–693–3912. Mr. Rietzke is the Designated Federal Officer for the WIAC.

SUPPLEMENTARY INFORMATION:

Background: The WIAC is an important component of the Workforce Innovation and Opportunity Act. The WIAC is a Federal Advisory Committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The purpose of the WIAC is to provide recommendations to the Secretary of Labor, working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) The evaluation and improvement of the nationwide workforce and labor market information (WLMI) system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information.

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) Studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training,

and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at *www.doleta.gov/wioa/wiac/.*

Purpose: The WIAC is currently in the process of identifying and reviewing issues and aspects of the WLMI system and statewide systems that comprise the nationwide system and how the Department and the States will cooperate in the management of those systems. As part of this process, the Advisory Council meets to gather information and to engage in deliberative and planning activities to facilitate the development and provision of its recommendations to the Secretary in a timely manner.

Agenda: Beginning at 8:30 a.m. on November 1, 2017, the Advisory Council will briefly review the minutes of the previous meeting held on June 21 and 22, 2017. The Advisory Council will host discussions with LMI experts and representatives from the Employment and Training Administration and the Bureau of Labor Statistics. WIAC will review recommendations for the two-year plan proposed by each sub-committee and facilitate further discussion. The meeting will end for the day 4:30 p.m.

The meeting will resume at 8:30 a.m. on November 2, 2017. The second day will continue the previous day's discussions. The WIAC chair will open the floor for public comment at 1:00 p.m. on November 2, 2017. However, the precise schedule of events is subject to change and an up-to-date agenda will be available on WIAC's Web page (see URL below) prior to the meeting. The second day will conclude with a discussion of next steps, including action items and planning for the next meeting of the Advisory Council. The meeting will adjourn at 4:30 p.m.

The full agenda for the meeting, and changes or updates to the agenda, will be posted on the WIAC's Web page, *www.doleta.gov/wioa/wiac/.*

Attending the meeting: BLS is located in the Postal Square Building, the building that also houses the U.S. Postal Museum, at 2 Massachusetts Ave. NE., Washington, DC. You must have a picture ID to be admitted to the BLS offices at Postal Square Building, and you must enter through the Visitors' Entrance. The BLS Visitors' Entrance is on First Street NE., mid-block, across from Union Station. Members of the public who require reasonable accommodations to attend the meeting may submit requests for accommodations by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''November WIAC Meeting Accommodations'' by the date indicated in the **DATES** section. Please include a specific description of the accommodations requested and phone number or email address where you may be contacted if additional information is needed to meet your request.

Public statements: Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''November WIAC Meeting Public Statements'' by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of the meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information (PII) in your public statement.

Requests to Address the Advisory Council: Members of the public or representatives of organizations wishing to address the Advisory Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Council chair. Individuals with disabilities, or others, who need special accommodations, should indicate their needs along with their request.

Byron Zuidema,

Deputy Assistant Secretary for Employment and Training Administration.

[FR Doc. 2017–21397 Filed 10–4–17; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Guam Military Base Realignment Contractor Recruitment Standards

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment and Training Administration (ETA) is soliciting comments concerning the following, proposed changes to the information collection request (ICR) titled, ''Guam Military Base Realignment Contractor Recruitment Standards.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by December 4, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden is included at the end of this notice and may be obtained free by contacting Michael DeMale by telephone at 202–693–3948 TTY 877–889–5627, (these are not toll-free numbers) or by email at *demale.michael.b@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4516, Washington, DC 20210; by email: *demale.michael.b@dol.gov;* or by Fax 202–693–3015.

FOR FURTHER INFORMATION CONTACT: Contact Michael DeMale by telephone at 202–693–3948 (this is not a toll-free number) or by email at *demale.michael.b@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure 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 can be properly assessed.

Section 2834(a) of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Pub. L. 111–84, enacted October 28, 2009) amended Section 2824(c) of the Military Construction Authorization Act (Pub. L. 110–417, Division B) by adding a new subsection (6). This provision prohibits contractors engaged in construction projects related to the realignment of U.S. military forces from Okinawa to Guam from hiring non-U.S. workers unless the Governor of Guam (Governor), in consultation with the Secretary of Labor (Secretary), certifies that: (1) There is an insufficient number of U.S. workers that are able, willing, and qualified to perform the work; and (2) that the employment of non-U.S. workers will not have an adverse effect on either the wages or the working conditions of U.S. construction workers in Guam.

In order to allow the Governor to make this certification, the NDAA requires contractors to recruit workers in the U.S., including in Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Virgin Islands, and Puerto Rico, according to the terms of a recruitment plan developed and approved by the Secretary. That recruitment plan has been reproduced in full in Section I below (''Contractor Recruitment Standards'').

The Department has developed the Contractor Recruitment Standards in full consultation with, and with the approval of, the Guam Department of Labor (GDOL). Although the Department has developed the recruitment standards, it has assigned oversight of the Contractor Recruitment Standards and the NDAA-required consultation with the Governor to GDOL through a Memorandum of Understanding (MOU) between the Department and GDOL, effective November 22, 2011 (the MOU can be found on the *RegInfo.gov* Web site listed at the end of this **Federal Register** Notice).

Under the NDAA, no Guam base realignment construction project work may be performed by a person holding an H–2B visa under the Immigration and Nationality Act until the contractor complies with the Department's Contractor Recruitment Standards, and the Governor of Guam issues the certification noted above.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0484.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Guam Military Base Realignment Contractor Recruitment Standards: Guam military base realignment contractors must take the following actions to recruit U.S. workers.

1. At least 60 days before the start date of workers under a base realignment contract, contractors must:

a. Submit a job posting via a completed Job Order (Guam Form GES 514) in person at the Guam Employment Service office, which is open Monday through Friday (except holidays) 8 a.m. to 5 p.m., at 710 Marine Corps Drive, Suite 301, Bell Tower Plaza, Hagatna (for assistance please call (671) 475–7000). The job posting must be posted on the GDOL Job Bank for at least 21 consecutive days;

b. Submit a job posting with the state workforce agency's Internet job boards for the Commonwealth of the Northern Mariana Islands at *https://marianaslabor.net/employer.asp,* and the National Labor Exchange available to all states at *https://us.jobs/national-labor-exchange.asp.*

c. Post a help wanted ad in the local newspaper for American Samoa and have a notice posted in the American Samoa Human Resources agency office. For assistance with these tasks, please see the American Samoa Human Resource agency contacts listed at *www.jobbankinfo.org.* For contractors needing assistance with job postings, additional contact information and a link to the required Guam form GES 514 are listed at *www.jobbankinfo.org.*

d. Where the occupation or industry is customarily unionized, contact the local union in Guam as well as the national offices of national unions who represent workers in the industry stating:

i. The existence of the job posting on the National Labor Exchange in compliance with these Contractor Recruitment Standards;

ii. Job post opening and closing dates;

iii. Direction to interested applicants on how to apply;

iv. That the job opportunity is with an ''Open Shop'' as Guam is a 'Right-to-Work' jurisdiction.

2. Each job posting must be posted for no less than 21 consecutive days and include, at a minimum, the following information:

a. The contractor's name and appropriate contact information for applicants to inquire about the job opportunity, or to send applications and/or resumes directly to the employer;

b. The geographic area of employment, with enough specificity to apprise applicants of any travel requirements as well as where applicants will likely have to reside to perform the services or labor;

c. A statement indicating whether the employer will pay for the worker's transportation to Guam;

d. A statement indicating whether daily transportation to and from the worksite(s) will be provided by the employer;

e. A description of the job opportunity with sufficient information to apprise U.S. workers of the services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days,

and the anticipated start and end dates of the job opportunity;

f. If the employer makes On-the-Job Training (OJT) available, include a statement that it will be provided to the worker;

g. A statement indicating whether overtime will be available to the worker and the wage offer for working any overtime hours;

h. The wage offer, and the benefits, if any, offered;

i. A statement that the position is temporary;

j. The total number of job openings the employer intends to fill; and

k. If the employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to securing such lodging, a statement disclosing the provision and cost of the board, lodging, or other facilities, including fringe benefits or assistance offered.

3. During the 28-day recruitment period, which begins on the earliest job posting date, contractors must interview all qualified and available Guam and U.S. construction workers who have applied for the employment opportunity.

4. After the close of the recruitment period, and no later than 30 days before the start date of workers under a contract, the contractor must provide a report including the following information via email to GDOL at *ndaa.recruitment@dol.guam.gov,* documenting its efforts to recruit U.S. workers from the U.S. and all U.S. territories.

a. Indicate all the recruitment approaches used to recruit workers, including an identification of the Internet job banks where the postings occurred, the occupation or trade, a description of wages and other terms and conditions of employment, the dates of each posting, and the job order or requisition number;

b. A copy of each job posting;

c. How each job posting and response was handled, including:

i. The number of job applications received;

ii. The name of each applicant;

iii. The position applied for;

iv. The final employment determination for each applicant or job candidate; and

v. For each U.S. job applicant not hired, a description of the specific, lawful, job-related reason for rejecting the applicant for employment, which includes a comparison of the job applicant's skills and experience against the terms listed in the original job posting.

Contractors may provide much of this information in the form of a table or spreadsheet, so that instead of a narrative style the contractor need only check an appropriate box or provide a phrase, number or date (*e.g.,* to indicate whether an individual reported for an interview or not, or lacked specific qualifications).

Burden

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Guam Military Base Realignment Contractor Recruitment Standards.

Form: GES 514.

OMB Control Number: 1205–0484.

Affected Public: Private sector.

Estimated Number of Respondents: 25.

Frequency: Once.

Total Estimated Annual Responses: 999.

Estimated Average Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 117 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Byron Zuidema,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 2017–21395 Filed 10–4–17; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–068]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by November 6, 2017. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many

of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Health and Human Services, National Institutes of Health (DAA–0443–2017–0003, 3 items, 1 temporary item). Working files within the subject files of the Director and Principal Deputy Director, including duplicative drafts and notes, comments, and background information. Proposed for permanent retention are the official subject files of the Director and Principal Deputy Director and their schedules of daily activities, including correspondence, reports, evaluations, decision papers, calendar appointments, and speeches.

2. Department of State, Office of Management Policy, Rightsizing, and Innovation (DAA–0059–2015–0015, 13 items, 6 temporary items). Records including working files, requests for information or coordination, staffing reviews, and greening initiative files. Proposed for permanent retention are project and subject files and records concerning security and staffing incidents and adjustments at posts.

3. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (DAA–0571–2015–0018, 1 item, 1 temporary item). International correspondence files.

4. Department of the Treasury, Internal Revenue Service (DAA–0058–2017–0006, 1 item, 1 temporary item). Report of tax returns under audit review used to manage workload.

5. Department of the Treasury, Internal Revenue Service (DAA–0058–2017–0007, 16 items, 16 temporary items). Records pertaining to requests for tax returns and return information to include Congressional, Federal, state, and local requests; memorandums of understanding; and coordination and implementation agreements.

6. Department of the Treasury, Internal Revenue Service (DAA–0058–2017–0022, 1 item, 1 temporary item). Records relating to requests from foreign governments concerning the collection of taxes per applicable tax treaties.

7. National Indian Gaming Commission, Agency-wide (DAA–0600–2017–0003, 10 items, 10 temporary items). Records include tribal gaming complaints, tribal facility notifications, compliance investigative case files, site visit reports, license issuances, related correspondence, and memoranda.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–21430 Filed 10–4–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 17 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern Time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Musical Theater (review of applications): This meeting will be closed.

Date and time: November 2, 2017; 2:00 p.m. to 4:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 7, 2017; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 7, 2017; 3:00 p.m. to 5:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 9, 2017; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 9, 2017; 4:00 p.m. to 6:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 13, 2017; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 13, 2017; 3:00 p.m. to 5:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 14, 2017; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 14, 2017; 3:00 p.m. to 5:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 14, 2017; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 14, 2017; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2017; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2017; 3:00 p.m. to 5:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 15, 2017; 11:30 a.m. to 1:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 16, 2017; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 16, 2017; 4:00 p.m. to 6:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 17, 2017; 12:00 p.m. to 2:00 p.m.

Dated: October 2, 2017.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2017–21456 Filed 10–4–17; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings

TIME AND DATE: Weeks of October 2 and 9, 2017

Thursday, October 5, 2017 at 10:00 a.m.

Wednesday, October 11. 2017, at 10:00 a.m. and at 2:00 p.m.

PLACE: Board Agenda Room, No. 5065, 1015 Half St. SE., Washington DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Roxanne Rothschild, Deputy Executive Secretary, 1015 Half Street SE., Washington, DC 20570. Telephone: (202) 273–2917.

Dated: October 3, 2017.

Roxanne Rothschild,

Deputy Executive Secretary, National Labor Relations Board.

[FR Doc. 2017–21592 Filed 10–3–17; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 6, 2017. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant*—Permit Application: 2018–003

David Schutt, Penguins International, PO Box 100483, Denver, CO 80250.

Activity for Which Permit is Requested

Harmful Interference; Import Into USA. The applicant proposes to collect samples of feathers molted from gentoo penguins, *Pygoscelis papua,* (n=2400) and fragments from discarded eggshells of gentoo penguins (n=50) for use in a study of pollutant exposure in penguins across a wide latitudinal gradient. The applicant plans to collect these abandoned biological tissue samples at approximately eleven gentoo penguin colonies in the Antarctic Peninsula region. The applicant will collect samples opportunistically from the ground or from penguin carcasses from the periphery and/or low-density areas of the colonies in order to minimize disturbance to the penguins. The samples will be imported into the USA and will be analyzed at the home institution.

Location

West Antarctic Peninsula region including South Orkney Islands, Elephant Island, South Shetland Islands.

Dates

October 1, 2017–June 1, 2018.

2. *Applicant*—Permit Application: 2018–018

Vernon G. Chu, BBC Worldwide Americas, Inc, 747 Third Ave., 7th FL, New York, NY 10017–2803.

Activity for Which Permit is Requested

Take; Harmful Interference. The applicant proposes to film Weddell seals in the McMurdo Sound area. Up to 16 Weddell seals (eight mother and pup pairs) could be targeted and disturbed during filming on the sea ice, underwater, and by air via remotely piloted aircraft. Up to 80 additional Weddell seals may be disturbed as a result of the filming activities. The footage will be used in a BBC documentary series that is expected to be useful for education and outreach about Antarctica and the scientific research conducted there. The applicant has also applied for a commercial or education photography permit from the National Marine Fisheries Service under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Location

McMurdo Sound, Antarctica.

Dates

October 1–December 15, 2017.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 2017–21446 Filed 10–4–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Vogtle Electric Generating Plant, Units 3 and 4; Southern Nuclear Operating Company; Hydrogen Venting from Passive Core Cooling System (PXS) Compartments

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 84 and 83 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information that is requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemptions and amendments were issued on August 23, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated February 22, 2017 (ADAMS Accession No. ML17053A425) and supplemented by letter dated June 2, 2017 (ADAMS Accession No. ML17153A362).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting exemptions from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 84 and 83 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemptions are required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee proposes to depart from approved AP1000 DCD Tier 2 information (test and tables) as incorporated into the Updated Final Safety Analysis Report (UFSAR) as plant-specific DCD information, and also proposes to depart from involved plant-specific Tier 1 information (and associated COL Appendix C information). Specifically, the amendment request proposes to revise the licensing basis information to reflect changes to the locations of the hydrogen venting primary openings in the passive core cooling system (PXS) valve/accumulator rooms inside containment.

Part of the justification for granting the exemptions was provided by the review of the amendments. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemptions and issued the amendments concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemptions met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendments were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17213A224.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17213A219 and ML17213A221, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML17213A222 and ML17213A223, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated February 22, 2017, and supplemented by letter dated June 2, 2017, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, Section III.B, as part of license amendment request 17–003, ''Hydrogen Venting from Passive Core Cooling System (PXS) Compartments (LAR–17–003).''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under

Accession No. ML17213A224, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated February 22, 2017 and supplemented by letter dated June 2, 2017. This exemption is related to, and necessary for, the granting of License Amendment Nos. 84 and 83, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17213A224), these exemptions meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. These exemptions are effective as of the date of its issuance.

III. License Amendment Request

By letter dated February 22, 2017, and supplemented by letter dated June 2, 2017, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on March 28, 2017 (82 FR 15377). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that the licensee requested on February 22, 2017 and supplemented June 2, 2017.

The exemptions and amendments were issued on August 23, 2017 as part of a combined package to the licensee (ADAMS Accession No. ML17213A217).

Dated at Rockville, Maryland, this 28th day of September 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Branch Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–21497 Filed 10–4–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 5, 2017, 11545 Rockville Pike, Room T–2B3, Rockville, Maryland 20852.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, October 5, 2017—11:30 a.m. Until 12:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown at 240–888–9835 to be escorted to the meeting room.

Dated: September 27, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–21499 Filed 10–4–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00025 and 052–00026; NRC–2008–0252]

Vogtle Electric Generating Plant, Units 3 and 4 Southern Nuclear Operating Company; Resolution of Auxiliary Building Wall Thickness and Description Inconsistencies

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and exemption to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (together ''the licensees''), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

DATES: Submit comments by November 6, 2017.

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

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: TWFN–8–D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Peter C. Hearn, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–1189; email: *Peter.Hearn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment, dated December 14, 2016, and supplemented by letter dated August 25, 2017 are available in ADAMS under Accession Nos. ML16349A583 and ML17237C049, respectively.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–91 and NPF–92, issued to the licensees for operation of the VEGP Units 3 and 4, located in Burke County, Georgia.

The proposed changes would revise the Combined Licenses to change the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document (DCD) Tier 2* information and related changes to the VEGP Units 3 and 4 COL Appendix C (and corresponding plant-specific DCD Tier 1) information. Because, this proposed change requires a departure from Tier 1 information in the plant-specific DCD, the licensees also requested an exemption from the elements of Tier 1 information certified in part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix D in accordance with section 52.63(b)(1).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The wall thickness and location changes do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events. The changes are consistent with the wall thicknesses and locations previously evaluated and the approved structural design of the auxiliary building, column line I wall between column lines 3 and 4, and labyrinth wall between column lines 3 and 4 and between J–1 and J–2 as shown in the AP1000 DCD Figure 3.7.2–12 Sheets 2, 3, 4, 5, 6, 8, and 10, and do not involve a change to the thicknesses of the auxiliary building, column line I wall between column lines 3 and 4, and labyrinth wall between column line 3 and 4 and between J–1 and J–2 as shown in COL Appendix C (and plant-specific Tier 1) Figures 3.3–1, 3.3–4, 3.3–6, 3.3–7, 3.3–8, and 3.3–9 and associated UFSAR Figures 1.2–5, 1.2–7, 1.2–8, 1.2.9,1.2–10, 1.2–11, 1.2–13, 1.2–14 and 3.7.2–12, Sheets 2, 3, 4, 5, 6, 8,and 10. . Failure of the auxiliary building is not an accident initiator or part of an initiating sequence of events for an accident previously evaluated. Therefore, the probabilities of the accidents evaluated in the UFSAR are not affected.

The changes do not have an adverse impact on the ability of the auxiliary building to perform its design functions. The design of the auxiliary building continues to meet the same regulatory acceptance criteria, codes, and standards as required by the UFSAR. As a result, the changes do not result in any

adverse impacts on the ability of the auxiliary building to mitigate the consequences of an accident, meet the applicable regulatory acceptance criteria, and there is no adverse effect on any safety-related SSC or function used to mitigate an accident. The changes do not affect the prevention and mitigation of other abnormal events, *e.g.,* anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. Therefore, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The wall thickness and location changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed changes are consistent with the previously evaluated and approved structural design of the auxiliary building, column line I wall between column lines 3 and 4 from elevation 100′-0″ to the roof, and labyrinth wall between column lines 3 and 4 and between J–1 and J–2 as shown in the AP1000 DCD Figure 3.7.2–12 Sheets 2, 3, 4, 5, 6, 8, and 10, and do not involve a change to the thicknesses of the auxiliary building, column line I wall between column lines 3 and 4, and labyrinth wall between column line 3 and 4 and between J–1 and J–2 as shown in COL Appendix C (and plant-specific Tier 1) Figures 3.3–1, 3.3–4, 3.3–6, 3.3–7, 3.3–8, and 3.3–9 and associated UFSAR Figures 1.2–5, 1.2–7, 1.2–8, 1.2–9, 1.2–10, 1.2–11, 1.2–13, 1.2–14, and 3.7.2–12, Sheets 2, 3, 4, 5, 6, 8, and 10. These changes do not adversely affect any other auxiliary building or SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or nonsafety-related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The wall thickness and location changes maintain existing safety margins. The proposed changes ensure that auxiliary building design requirements and design functions are met. The proposed changes maintain existing safety margin through continued application of the existing requirements of the UFSAR, while updating the acceptance criteria for verifying the design features necessary to ensure the auxiliary building performs the design functions required to meet the existing safety margins. Therefore, the proposed changes satisfy the same design functions in accordance with the same codes and standards as stated in the UFSAR. These proposed changes do not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin.

Because no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by these proposed changes, no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of

that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by December 4, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit

documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated December 14, 2016, as supplemented August 25, 2017.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Dated at Rockville, Maryland, this 28th day of September 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–21495 Filed 10–4–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2017–0200]

NextEra Energy Duane Arnold, LLC.; Duane Arnold Energy Center, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making a finding of no significant impact for a proposed issuance of an amendment to Renewed Facility Operating License No. DPR–49 held by NextEra Energy Duane Arnold, LLC. (NextEra, the licensee) for the operation of Duane Arnold Energy Center (DAEC), located in Linn County, Iowa. The proposed amendment would modify the DAEC Plume Exposure Pathway emergency planning zone (EPZ) boundary and revise the DAEC evacuation time estimate (ETE) study to account for the EPZ boundary changes.

DATES: The environmental assessment (EA) referenced in this document is available on October 5, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0200 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0200. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mahesh L. Chawla, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–8371; email: *Mahesh.Chawla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments pursuant to § 50.54 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Conditions of licenses,'' paragraph (q), to Renewed Facility Operating License No. DPR–49, held by NextEra Duane Arnold, LLC. (NextEra, the licensee) for the operation of Duane Arnold Energy Center (DAEC), located in Linn County, Iowa.

In accordance with 10 CFR 51.21, the NRC has prepared an EA that analyzes the environmental effects of the proposed licensing action. Based on the results of the EA, and in accordance with 10 CFR 51.31(a), the NRC has prepared a finding of no significant impact (FONSI) for the proposed amendments.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would revise the DAEC Renewed Facility Operating License in order to set the DAEC Plume Exposure Pathway emergency planning zone (EPZ) boundary for an area beyond the 10-mile required EPZ pathway. The proposed action is in accordance with the licensee's application dated March 31, 2017 (ADAMS Accession Nos. ML17102B183 and ML17102B184) and with current NRC's regulations in 10 CFR 50.47, and 10 CFR part 50, appendix E.

Notable proposed changes are (a) modification of Subarea 24 of the DAEC Plume Exposure Pathway EPZ by designating U.S. Highway 30 as its southern boundary, which will slightly decrease the total size of the EPZ, and (b) revision of the DAEC evacuation

time estimate (ETE) study to account for the EPZ boundary changes.

Need for the Proposed Action

Nuclear power plant owners, government agencies, and State and local officials work together to create a system for emergency preparedness and response that will serve the public in the unlikely event of an emergency. An effective emergency preparedness program helps decrease the consequences of an initiating event at a nuclear power reactor that proceeds to a severe accident. Emergency preparedness cannot affect the probability of the initiating event, but a high level of emergency preparedness increases the probability of accident mitigation if the initiating event proceeds beyond the need for initial operator actions.

Each licensee is required to establish emergency plans to be implemented in the event of an accident. These emergency plans cover preparations for evacuation, sheltering, and other actions to protect residents near plants in the event of a serious incident.

The NRC, as well as other Federal and state regulatory agencies review the subject plans to ensure that the condition of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Separate from this EA, the NRC staff is evaluating NextEra's proposed changes to the EPZ boundary for DAEC. This review will be documented in the safety evaluation report for the proposed license amendment. The staff's review will determine whether there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency in accordance with 10 CFR 50.47 and the requirements in appendix E to 10 CFR part 50.

The proposed action is needed to make DAEC's EPZ boundary more consistent with the existing roads and easier to implement more effectively. While changing the southern boundary to Highway 30 will decrease the size of the EPZ slightly, it will enhance local law enforcement's ability to evacuate the affected population as well as improve their ability to control access back into the evacuated areas. The licensee states in its application (Adams Accession No. ML171028184) that the changes to the EPZ were approved by both the State of Iowa and the Federal Emergency Management Agency (FEMA).

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of environmental effects of the proposed action. The proposed action consists of a modification to the DAEC EPZ boundary and revision to the DAEC ETE study to account for the EPZ boundary changes. Notable proposed changes are: (a) Modification of Subarea 24 of the DAEC Plume Exposure Pathway EPZ by designating U.S. Highway 30 as its southern boundary, which will slightly decrease the total size of the EPZ, and (b) revision of the DAEC ETE study to account for the EPZ boundary changes.

The proposed changes would have no direct impacts on land use or water resources, including terrestrial and aquatic biota as the proposed action involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents. No changes to the plant's National Pollutant Discharge Elimination System permit are needed. Changes to the Southern boundary of the EPZ to Highway 30, a four-lane highway, could result in minor changes in vehicular traffic and associated air pollutant emissions, but no significant changes in ambient air quality would be expected. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, and no impacts to historic and cultural resources. Therefore, there would be no significant non-radiological impacts associated with the proposed action.

The NRC has concluded that the proposed action would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. There would be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes would be made to plant buildings or the site property. Changing the southern boundary of the EPZ to Highway 30 will slightly decrease the size of the EPZ; therefore, some residents that are located within the original EPZ boundary would no longer be subject to actions under the DAEC emergency plan. In the event of an accident, those residents not located in the EPZ could potentially receive a slightly higher radiation dose than those remaining within the modified EPZ, as they would no longer get mandated instructions from local law enforcement or other first responders pertaining to sheltering, evacuation, or other actions DAEC deems necessary to take under its emergency plan. However, as stated above, the NRC would only approve a reduction in the overall size of the DAEC EPZ if there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency in accordance with NRC's regulations in 10 CFR part 50. As a result, the potential radiological dose increase to the residents located outside of the EPZ would not be significant, and in any event, residents located outside of the EPZ would be evaluated on an ad-hoc basis based on specific conditions. Therefore, the proposed action would not result in a significant change to the radiation exposures to the public or radiation exposure to plant workers.

Accordingly, the NRC concludes that there would be no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental impacts. Therefore, the environmental impacts of the proposed action and the denial of the exemption request would be similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

On September 8, 2017, the NRC staff consulted with the Iowa State official regarding the environmental impact of the proposed action. The state official had no comments.

III. Finding of No Significant Impact

The licensee has requested a license amendment pursuant to 10 CFR 50.54(q) to modify the DAEC Plume Exposure Pathway Emergency Planning Zone boundary. The NRC is considering issuing the requested amendments. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological and non-radiological impacts. The reason the environment would not be significantly affected is because the proposed changes would only result in minor changes in associated vehicular traffic, along with resulting air pollutant emissions and would not result in a significant change

to radiation exposures to the public or plant workers. This FONSI incorporates by reference the EA in Section II of this notice. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

The related environmental document is the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Duane Arnold Energy Center, Final Report,'' NUREG–1437, Supplement 42. The NUREG–1437, Supplement 42, provides the latest environmental review of current operations and description of environmental conditions at DAEC.

The finding and other related environmental documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records will be accessible electronically from ADAMS Public Electronic Reading Room on the Internet at the NRC's Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an email to *pdr.resource@nrc.gov.*

IV. 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./web link/ **Federal Register** citation
NextEra Energy Duane Arnold, LLC, License Amendment Request (TSCR–165) for Revision to Emergency Planning Zone in the Duane Arnold Energy Center Emergency Plan, Dated March 31, 2017	ML17102B183
NextEra Energy Duane Arnold, LLC, Evaluation of Proposed Amendment for License Amendment Request (TSCR–165) for Revision to Emergency Planning Zone in the Duane Arnold Energy Center Emergency Plan, Dated March 31, 2017	ML17102B184
NUREG–1437, Supplement 42, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Duane Arnold Energy Center, Final Report, Dated October 2010	ML102790308

Dated at Rockville, Maryland, this 26th day of September 2017.

For the Nuclear Regulatory Commission.

Mahesh L. Chawla,

Project Manager, Plant Licensing Branch LPL3, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–21498 Filed 10–4–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0122]

Information Collection: Notices, Instructions and Reports to Workers: Inspection and Investigations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Notices, Instructions and Reports to Workers: Inspection and Investigations.''

DATES: Submit comments by November 6, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs 3150–0044, NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–3621, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0122 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–2017–0122.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML17194A752.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment

submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Notices, Instructions and Reports to Workers: Inspection and Investigations.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on June 21, 2017 (82 FR 28360).

1. *The title of the information collection:* 10 CFR part 19, ''Notices, Instructions and Reports to Workers: Inspection and Investigations.''
2. *OMB approval number:* 3150–0044.
3. *Type of submission:* Extension.
4. *The form number if applicable:* N/A.
5. *How often the collection is required or requested:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in applicable NRC-licensed activities.
6. *Who will be required or asked to respond:* Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.
7. *The estimated number of annual responses:* 20,300.
8. *The estimated number of annual respondents:* 1,401,163.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 320,969.
10. *Abstract:* Part 19 of title 10 of the *Code of Federal Regulations* (10 CFR), establishes requirements for notices, instructions, and reports by licensees and regulated entities to individuals participating in NRC-licensed and regulated activities and options available to these individuals in connection with Commission inspections of licensees and regulated entities, and to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, titles II and IV of the Energy Reorganization Act of 1974, and regulations, orders, and licenses thereunder. The regulations in this part also establish the rights and responsibilities of the Commission and individuals during interviews compelled by subpoena as part of agency's inspections or investigations under Section 161c of the Atomic Energy Act of 1954, as amended, on any matter within the Commission's jurisdiction.

Dated at Rockville, Maryland, this 28th day of September , 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–21418 Filed 10–4–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Standardization of Instrumentation Setpoint Nomenclature

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 87 and 86 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on September 22, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated February 24, 2017, as supplemented by letter dated August 7, 2017 (ADAMS Accession Nos. ML17055C352 and ML17219A185, respectively).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 87 and 86 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to the Updated

Final Safety Analysis Report (UFSAR) in the form of departures from the plant-specific Design Control Document (DCD) Tier 2 information, and involves changes to related plant-specific DCD Tier 1 information, with corresponding changes to the associated COL Appendix C information. In addition, revisions are proposed to COL Appendix A, Technical Specifications. The proposed changes revise the COLs concerning standardizing the Protection and Safety Monitoring System (PMS) setpoint nomenclature. No changes were proposed to setpoint values or PMS alarms and actuations.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17233A122.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17233A110 and ML17233A111, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML17233A105 and ML17233A106, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated February 24, 2017, as supplemented by letter dated August 7, 2017, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 17–004, ''Standardization of Instrumentation Setpoint Nomenclature.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17233A122, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the licensee's request dated February 24, 2017, as supplemented by letter dated August 7, 2017. This exemption is related to, and necessary for the granting of License Amendment Nos. 87 (Unit 3) and 86 (Unit 4), which is being issued concurrently with this exemption.

3. As explained in Section 6.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17233A122), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated February 24, 2017 (ADAMS Accession No. ML17055C352), as supplemented by letter dated August 7, 2017 (ADAMS Accession No. ML17219A185), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on April 25, 2017 (82 FR 19104). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on February 24, 2017, as supplemented by letter dated August 7, 2017.

The exemption and amendment were issued on September 22, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17233A104).

Dated at Rockville, Maryland, this 28th day of September 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–21496 Filed 10–4–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–213 and CP2017–321; MC2017–214 and CP2017–322]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 10, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit

comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–213 and CP2017–321; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 365 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 29, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Michael L. Leibert; *Comments Due:* October 10, 2017.

2. *Docket No(s).:* MC2017–214 and CP2017–322; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 58 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 29, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Michael L. Leibert; *Comments Due:* October 10, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–21457 Filed 10–4–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81771; File No. TP 17–11]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to VanEck Vectors NDR CMG Long/Flat Allocation ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

September 29, 2017.

By letter dated September 29, 2017 (the ''Letter''), counsel for VanEck Vectors ETF Trust (the ''Trust''), on behalf of the Trust, VanEck Vectors NDR CMG Long/Flat Allocation ETF (the ''Fund''), any national securities exchange on or through which shares issued by the Fund (''Shares'') may subsequently trade, Van Eck Securities Corporation (the ''Distributor''), and persons or entities engaging in transactions in Shares (collectively, the ''Applicants''), requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares (''Creation Units'').

The Trust is registered with the Securities and Exchange Commission (''Commission'') under the Investment Company Act of 1940, as amended (''1940 Act''), as an open-end management investment company. The Fund is an exchange-traded fund (''ETF'') organized as a series of the Trust. The Fund will seek to provide investment results that closely correspond, before fees and expenses, to the performance of the Ned Davis Research CMG US Large Cap Long/Flat Index (the ''Index'').[1] The Fund intends, at least initially, to operate as an ''ETF of ETFs'' by seeking to track the performance of its underlying Index by holding shares of one or more ETFs (each, an ''Underlying ETF'') whose investment objective is to track the performance of the S&P 500.[2]

In order to track the Index, the Fund will invest at least 80% of its total assets (but typically far more) in component securities of the Index (directly or by indirect investments through one or more Underlying ETFs). The Fund may invest the remaining 20% of its total assets in securities not included in the Index, money market instruments, including repurchase agreements or other funds which invest exclusively in money market instruments, convertible securities, structured notes, and certain derivatives, which the Investment Advisor believes will help the Fund track the Index. Depositary receipts not included in the Index may also be used by the Fund in seeking performance that

[1] The Index is a rules-based index that follows a proprietary model developed by Ned Davis Research, Inc. in conjunction with Capital Management Group, Inc. To help limit loss associated with adverse market conditions, the model produces trade signals that dictate the Index's equity allocation ranging from 100% fully invested (*i.e.,* ''long'') to 100% in cash (*i.e.,* ''flat''). The Index 100% replicates the S&P 500 Index (the ''S&P 500'') when the Index is long and holds U.S. Treasury Bills when the Index is flat (*i.e.,* it will be allocated to the Solactive 13-week U.S. T-bill Index). When the Index is not completely long or flat, either 80% or 40% of it will be allocated to the S&P 500, with the remaining portion (20% or 60% respectively) allocated to U.S. Treasury Bills.

[2] The Fund will operate as an ETF of ETFs until the Fund reaches, in the opinion of the Investment Adviser, an adequate asset size. When the Fund reaches an adequate size and the Index has an equity allocation, the Fund will then seek to track the Index by investing directly in the shares of the 500 companies comprising the S&P 500. In the rare event the Fund does not operate as an ETF of ETFs for that day, the Fund will operate to meet the conditions of the ETF Class Relief, including the Equity ETF Class Letter. Applicants do not believe that either option will have an effect on the efficacy of the arbitrage process for the Fund.

corresponds to the Index.[3] Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner similar to the Underlying ETFs.

The Applicants represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- Creation Units will be continuously redeemable at the net asset value (the ''NAV'') next determined after receipt of a request for redemption by the Fund,[4] and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on NYSE Arca, Inc. or another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the ''Listing Exchange'');
- All Underlying ETFs in which the Fund invests will either meet all conditions set forth in relevant class relief, will have received individual relief from the Commission, or will be able to rely upon individual relief even though they are not named parties;
- All of the components of the Index will have publicly available last sale trade information;
- The intra-day indicative value of the Fund per share and the intra-day value of the Index will be publicly disseminated every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association;
- On each business day before the opening of business on the Listing Exchange, the Fund's custodian, through the National Securities Clearing Corporation, will make publicly available the list of the names and the numbers of securities of the Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Listing Exchange will disseminate continuously every 15 seconds throughout the trading day, through the facilities of the Consolidated Tape Association, the market value of a Share, and the Listing Exchange, market data vendors, or other information providers will disseminate, every 15 seconds throughout the trading day, a calculation of the intra-day indicative value of a Share;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Fund, the ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Fund will invest solely in liquid securities and financial instruments;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Applicants believe that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Applicants may not rely upon that exception for the Shares.[5] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The-Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund, and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.[6]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund, and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the

[3] American depositary receipts not included in the Index may be used by the Fund in seeking performance that corresponds to the Index, and in managing cash flows, and may count towards compliance with the Fund's 80% policy.

[4] The NAV of the Fund generally is determined each business day as of the close of trading (ordinarily 4:00 p.m., Eastern Time) on the New York Stock Exchange.

[5] While ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

[6] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and, therefore, would not violate that rule.

Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[7]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Applicants and, consistent with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder.

Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21400 Filed 10–4–17; 8:45 am]

BILLING CODE 8011–01–P

[7] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based on the Applicants' representations in the Letter, that the provision of notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b–17.

[8] 17 CFR 200.30–3(a)(6) and (9).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81776; File No. SR–NYSE–2017–49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Technical and Conforming Changes to Section 703.02 of the NYSE Listed Company Manual

September 29, 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 September 20, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make technical and conforming changes to Section 703.02 (part2) (Stock Split/Stock Rights/Stock Dividend Listing Process) (''Section 703.02 (part2)'') of the NYSE Listed Company Manual (''Listed Company Manual''). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make certain technical and conforming changes to Section 703.02 (part2) of the Listed Company Manual.

Currently, Section 703.02(part 2) provides that ''a distribution of less than 25% is traded ''ex'' (without the distribution) on and after the business day prior to the record date.'' Section 703.02 (part 2) was recently amended to conform to amendments to Securities and Exchange Act Rule 15c6–1(a), which shortened the settlement cycle from three days to two days (''T+2).[4] The tabulation chart in Section 703.02 (part2) setting forth the relation between record dates and normal ex-dividend dates according to the days of the week, however, was inadvertently not updated to reflect the shortened settlement cycle. The Exchange accordingly proposes to amend the tabulation chart to reflect two day settlements, as follows:

Record date	Normal ex-dividend date
Monday	preceding Friday.
Tuesday	preceding Monday.
Wednesday	preceding Tuesday.
Thursday	preceding Wednesday.
Friday	preceding Thursday.
Saturday	preceding Thursday.
Sunday	preceding Thursday.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and further the objectives of Section 6(b)(5) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed changes removes [sic] impediments to and perfects the mechanism of a free and open market by conforming the tabulation chart in Section 703.02 (part 2) of the Listed Company Manual to reflect a two day settlement, thereby reducing potential confusion, and making the Exchange's rules easier to navigate. The Exchange also believes that updating the illustrative material in the Listed Company Manual also removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having outdated or inconsistent material in the Listed Company Manual. The Exchange believes that aligning such material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather is solely concerned with conforming Section 703.02 (part 2) of the Listed Company Manual to reflect the two day settlement cycle. The Exchange also believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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,[7] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2017–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–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 available for Web site viewing and

[4] *See* 17 CFR 240.15c6–1(a); Securities Exchange Act Release No. 80021 (February 14, 2017), 82 FR 10931(February 16, 2017) (SR–NYSE–2016–87) and Securities Exchange Act Release No. 81231 (July 27, 2017), 82 FR 36008 (August 2, 2017) (SR–NYSE–2017–38).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] The Exchange has fulfilled this requirement.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(2)(B).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2017–49 and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21411 Filed 10–4–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81765; File No. SR–MRX–2017–19]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 716(c) on the Block Order Mechanism

September 29, 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 August 18, 2017, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 716(c) to more accurately describe the allocation methodology used in the Block Order Mechanism, and add language regarding how the block execution price is determined.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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 Block Order Mechanism is a process by which a member can obtain liquidity for the execution of block-sized orders,[3] defined as orders for fifty contracts or more.[4] When an order is entered in the Block Order Mechanism, that order is exposed to members who are given an opportunity to respond with the prices and sizes at which they would be willing to trade with the block-sized order.[5] The exposure period is designated by the Exchange via circular, but must be no less than 100 milliseconds and no more than 1 second.[6] At the conclusion of the exposure period, either an execution will occur at a single block execution price,[7] or the order will be cancelled.[8] The purpose of the proposed rule change is to amend Rule 716(c) to more accurately describe the allocation methodology used in the Block Order Mechanism, and add language regarding how the block execution price is determined. The Exchange believes that these changes will increase transparency around the operation of the Block Order Mechanism to the benefit of members and market participants.

Currently, Rule 716(c)(2)(ii) provides that Responses, quotes, and Professional Orders[9] at the block execution price will participate in the execution of the block-size order according to Rule 713(e)—*i.e.,* the Exchange's regular allocation rule. As implemented today, however, interest that is executed in the Block Order Mechanism follows the customer priority pro-rata allocation methodology designed for the Exchange's auction mechanisms, including, for example, the Facilitation Mechanism,[10] Solicited Order Mechanism,[11] and Price Improvement Mechanism,[12] with the exception that those two-sided auction mechanisms also allocate contracts against the contra order. This auction allocation methodology is similar to the Exchange's regular allocation methodology but does not provide enhanced allocations to the Primary Market Maker (''PMM'') pursuant to Rule 713(e) and Supplementary Material .01(b) to Rule 713.[13] The Exchange therefore proposes to amend Rule 716(c)(2)(ii) to provide that, at the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first in time priority, and then quotes, Professional Orders, and Professional Responses will participate in the execution of the block-size order based upon the percentage of the total number of contracts available at the block execution price that is represented by the size of the quote, Professional Order, or Professional Response. In addition, the Exchange proposes to specify in Rule 716(c)(2)(i) that interest that is priced better than the block execution price is executed in full. In particular, the Exchange proposes to amend this rule to state that bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price. Although Rule 716(c)(2)(ii) described above explains how allocations are handled at the block execution price, the Exchange believes that additional the additional clarity that interest that is priced better than the block execution

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 716(c).

[4] *See* Rule 716(a).

[5] A ''Response'' is an electronic message that is sent by members in response to a broadcast message. *See* Rule 716(b).

[6] *See* Supplementary Material .04 to Rule 716.

[7] Responses and orders and quotes on the order book at the time the block order is executed that are priced better than the block execution price are executed at the block execution price. *See* Rule 716(c)(2)(i).

[8] *See* Rule 716(c)(2).

[9] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* Rule 100(a)(37C).

[10] *See* Rule 716(d).

[11] *See* Rule 716(e).

[12] *See* Rule 723.

[13] Supplementary Material .01(b) to Rule 713 provides that, if the PMM is quoting at the best price, it has participation rights equal to the greater of the proportion of the total size at the best price represented by the size of its quote, or a percentage allocation entitlement based on the number of other Professional Orders and market maker quotations at the best price.

price is executed in full would be helpful to members. With these two proposed changes, Rule 716(c) will more accurately describe the allocation methodology used in the Block Order Mechanism.

Furthermore, the Exchange proposes add language to Rule 716(c)(2)(i) that explains the price at which orders entered into the Block Order Mechanism are executed. In particular, the Exchange proposes to state that Responses, orders, and quotes will be executed at a single block execution price that is the price for the block-size order at which the maximum number of contracts can be executed consistent with the member's instruction. For example, if a member enters a block-sized order to buy 100 contracts at $1.00 into the Block Order Mechanism, and members enter Response A to sell 50 contracts at $0.90 and Response B to sell 40 contracts at $0.95, the block execution price would be $0.95 as this is the price at which the maximum number of contracts could be executed. The block-sized order and both Responses would then be executed at this single block execution price. Responses A and B would be executed in full since there is sufficient size to execute both Responses against the block-size order. In addition, if two other members also enter Responses C (Priority Customer) and D (non-Priority Customer) to sell at $0.98 for 10 contracts each, the block execution price would be $0.98 as additional contracts could be executed at that price. In that instance, Responses A and B, which are priced better than the block execution price, would be executed in full, while Responses B and C, which are priced at the block execution price, would participate in accordance with the allocation methodology described in this proposed rule change—*i.e.,* the remaining 10 contracts would go to Response C, which is a Priority Customer Response. The Block Order Mechanism is designed to provide an opportunity for members to receive liquidity for their block-sized orders and therefore trades at a price that allows the maximum number of contracts of such order to be executed against Responses entered to trade against the block-size order and interest on the Exchange's order book. The Exchange believes that describing how the block execution price is determined in Rule 716(c)(2)(i) will increase transparency around pricing of executions in the Block Order Mechanism.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[14] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[15] because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to the allocation language in Rule 716(c)(2)(i)–(ii) are consistent with the protection of investors and the public interest as the proposed allocation language more accurately reflects the Exchange's process for allocating contracts executed in the Block Order Mechanism. Although the Exchange's allocation rule for the Block Order Mechanism currently references the allocation process for regular trading, the allocation methodology does not include certain parts of the regular allocation procedure. In particular, the Exchange does not grant any special allocation to the PMM for interest executed in the Block Order Mechanism. The Exchange believes that it is appropriate to not provide an enhanced allocation entitlement to the PMM for interest executed in the Block Order Mechanism, as the Block Order Mechanism provides an auction process that does not rely on market maker quoting and other obligations to source liquidity. Furthermore, the Exchange believes that it is helpful to explain in this rule that interest that is priced better than the block execution price would be executed in full. The allocation process used for the Block Order Mechanism is similar to how the Exchange allocates contracts in other auction mechanisms, including, for example, the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism, with the exception that those two-sided auction mechanisms also allocate contracts against the contra order.[16]

The Exchange also believes that the proposed changes to describe how the block execution price is determined is consistent with the protection of investors and the public interest as this change will increase transparency around the price at which interest is executed in the Block Order Mechanism. As explained above, the Block Order Mechanism is designed to provide an opportunity for members to receive liquidity for their block-sized orders and therefore trades at a price that allows the maximum number of contracts of such order to be executed against Responses entered to trade against the block-size order and interest on the Exchange's order book. The Exchange believes that describing how the block execution price is determined in Rule 716(c)(2)(i) will increase transparency around pricing of executions in the Block Order Mechanism.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to correct the Exchange's rules to more accurately reflect the handling of auctions in the Block Order Mechanism. No changes are proposed to the operation of the Exchange's trading system, and no members will be impacted by the proposed rule, which merely reflects current functionality offered to members that trade in the Block Order Mechanism. The proposed rule change is therefore not designed to impose any significant burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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[18] and

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* supra notes 10–12 and accompanying text.

[17] 15 U.S.C. 78f(b)(8).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange notes that a waiver is consistent with the protection of investors and the public interest because it will allow the Exchange to correct its Block Order Mechanism rules to reflect the current functionality of the system without undue delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

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–MRX–2017–19 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–MRX–2017–19.* 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–MRX–2017–19* and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

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[19] 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.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81775; File No. SR–NYSEArca–2017–115]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date for Certain Changes to the NYSE Arca Rule 5 and Rule 8 Series

September 29, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 28, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''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 extend the date on which certain changes to the NYSE Arca Rule 5 and Rule 8 series are implemented. 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

On January 6, 2017, the Exchange filed a proposed rule change, as subsequently amended by Amendments No. 1 and 2 thereto (as amended, the ''Proposed Rule Change''), to adopt certain changes to the NYSE Arca Rules 5 and 8 series to add additional continued listing standards for exchange-traded funds (''ETFs'') as well as clarify the procedures that the Exchange will undertake when an ETF is noncompliant with applicable rules. Given the scope of the amendments specified in the Proposed Rule Change, the Exchange proposed that such amendments not be implemented until October 1, 2017. On March 9, 2017, the Commission granted accelerated approval of the Proposed Rule Change, including the October 1, 2017 implementation date.[4] The Exchange now proposes to extend the implementation date of the amendments specified in the Proposed Rule Change to January 1, 2018.

Since the Proposed Rule Change was approved, the Exchange has engaged in extensive conversations with issuers of listed ETFs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application. As a result of these conversations, ETF issuers have expressed concern about their ability to have in place systems and procedures to ensure compliance by the current October 1, 2017 implementation date. In particular, listed ETF issuers, and industry advocacy groups on their behalf, have explained that issuers require additional time to engage with listing exchanges to better understand how elements of the Proposed Rule Change will be interpreted and applied as well as to design and test new compliance systems. The Exchange has been engaged with its listed issuers and will continue to engage with them on topics of rule interpretation and application. In addition, issuers require time to engage in discussions with third-party providers to source and track new data elements required for rule compliance.[5] Because indices are, in most cases, managed and maintained by third-party index providers, issuers need to ensure that they have procedures in place to obtain required index files on an ongoing basis so they can test such files for compliance with applicable continued listing rules. Further, issuers may need to contract with third party data providers to obtain necessary trading information about securities included in an index. The Exchange understands that issuers have been engaged in dialogue with index providers on these topics. Once all required information has been obtained, issuers have informed the Exchange that they require additional time to test their systems and procedures to ensure they are accurate and efficient.

The Exchange believes it is appropriate to extend the implementation date of the Proposed Rule Change to January 1, 2018 to provide listed ETF issuers with the time needed to finish developing and testing their compliance procedures. In support of its proposal, the Exchange notes that the Proposed Rule Change imposes significant new compliance requirements on issuers that they have not been subject to previously. To meet these new compliance requirements, issuers must develop internal systems as well as coordinate with third-party service providers, such as index providers, to develop procedures by which they can obtain essential data. Listed issuers have informed the Exchange that they are unable to complete this extensive project by the pending October 1, 2017 implementation date. The Exchange believes that it is critical for listed ETF issuers to have the appropriate procedures and systems in place to monitor and evidence ETF compliance with the new continued listing rules before such rules are implemented because failure to comply with Exchange rules could lead to delisting. Therefore, the Exchange proposes to extend the implementation date for the Proposed Rule Change until January 1, 2018. During the proposed extension period, the Exchange will communicate with issuers, as needed, with respect to any questions about interpretation and application of the Proposed Rule Change and in order to better understand the progress being made by issuers in completing the development of their compliance testing and procedures.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections [sic] 6(b)(5)[7] of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the protection of investors because failure to comply with Exchange rules could lead to delisting and the proposed amendment will enable listed issuers to have the systems and procedures needed to monitor and evidence compliance with the Proposed Rule Change prior to such rule being implemented. Providing listed issuers with additional time to ensure that they have adequate compliance systems in place furthers the protection of investors and the public interest because it will enhance investor confidence that listed issuers are complying with Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange notes that the proposed rule change will facilitate listed issuer ability to monitor and evidence compliance with approved continued listing rules by providing issuers with additional time to finish developing and testing their internal systems and procedures prior to the implementation date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a copy of a letter from the Investment Company Institute, on behalf of listed ETF issuers, to the Securities and Exchange Commission.[8] As described in Item 3 [sic], above, the Investment Company Institute detailed challenges that listed ETF issuers are facing in developing compliance systems to address the amendments contained in the Proposed Rule Change and have requested that

[4] *See* Securities Exchange Act Release No. 80189 (March 9, 2017), 82 FR 13889 (March 15, 2017) (SR–NYSEArca–2017–01).

[5] *See,* for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, available at *https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-155175.pdf.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Footnote 5, *supra.*

the implementation date for such amendments be extended.

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) of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay will allow the Exchange to immediately extend the implementation date of the Proposed Rule Change, and avoid the potential confusion and disruption that could result if the extension did not become operative until after October 1, 2017. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–115 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–2017–115. 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–2017–115 and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

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[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81768; File No. SR–C2–2017–025]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.45 Relating to Disaster Recovery

September 29, 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 September 20, 2017, C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 6.45 relating to disaster recovery. The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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

Background

C2 adopted Rule 6.45 in 2012 for the limited purpose of providing alternative means of operation in the event C2's trading system became inoperable or otherwise unavailable for use due to a disaster or other unusual circumstance. In particular, Rule 6.45, as originally adopted, was intended to allow C2 to operate a ''Disaster Recovery Facility'' (''DRF'') to continue to trade exclusively listed option classes until C2's main trading system was again available.[5] C2 utilizes hardware located in the Chicago Board Options Exchange, Incorporated (''CBOE'') building in Chicago, IL, for the purposes of operating the DRF. C2's main trading engine is located on the East coast.

In 2015, Rule 6.45 was amended to add greater detail to C2's disaster recovery rules and harmonize the disaster recovery rules with newly implemented disaster recovery-related regulatory imperatives of Regulation Systems Compliance and Integrity (''Regulation SCI''), which superseded and replaced the SEC's voluntary Automation Review Policy.[6] In doing so, C2 made certain changes to Rule 6.45 to provide additional details regarding the Exchange's back-up trading systems, business continuity and disaster recovery plans, and testing and update its disaster recovery rules to ensure consistency with Regulation SCI.

C2 now proposes to make additional changes to its disaster recovery rules to provide C2 the authority to take additional steps necessary to preserve the C2's ability to conduct business in the event that C2's primary and/or back-up data center(s) become inoperable or otherwise unavailable for use due to a significant systems failure, disaster or other unusual circumstances and make clear in the Rules the intermediary steps that C2 may take to disable certain systems and users' connectivity while continuing to operate its primary data center. C2 believes this authority serves the interests of all investors and the general public, because it helps C2 ensure its continuous operation and ability to maintain fair and orderly markets in the event of a significant systems failure or other unusual circumstance.

Proposal

C2 proposes to amend Rule 6.45 relating to disaster recovery. Specifically, the Exchange proposes to make changes to Rule 6.45 to: (1) Allow C2 to establish certain additional temporary requirements applicable to particular Designated BCP/DR Participants[7] during use of the back-up data center; (2) permit C2 to deactivate certain nonessential systems and systems functionalities in response to limited systems disruptions or malfunctions, security intrusions, systems compliance issues, or other unusual circumstances; and (3) permit C2 to restrict access of a Permit Holder or associated person to the System if such access poses a significant threat to C2's ability to operate systems essential to maintain a fair and orderly market.

C2 proposes to add new Rule 6.45(b)(iv)(B) (Alternative BCP/DR Participant Obligations), which would provide that during the use of the back-up data center, C2 may, if necessary for the maintenance of fair and orderly markets, establish heightened quoting obligations for Designated BCP/DR Participants in a class in which the Designated BCP/DR Participant is already an appointed Market-Maker up to the standards specified for Designated Primary Market-Makers (''DPMs'') in Rule 8.17(a)[8] and/or disallow the ability to deselect an appointment intraday in a class in which the Designated BCP/DR Participant is already an appointed Market-Maker.[9] Proposed Rule 6.45(b)(iv)(B) would also provide that C2 would notify market participants of any such additional temporary requirements prior to implementation in a reasonable manner as determined by

[5] *See* Securities Exchange Act Release No. 67357 (July 5, 2012), 77 FR 40928 (July 11, 2012) (Order Granting Approval of Proposed Rule Change to Implement a Disaster Recovery Facility) (SR–C2–2012–011). C2 notes it no longer has any exclusively listed option products.

[6] *See* Securities Exchange Act Release No. 76300 (October 4, 2015), 80 FR 68343 (October 28, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 6.45 Relating to Disaster Recovery) (SR–C2–2015–030); *see also* Securities Exchange Act Release Nos. 73639 (November 19, 2014), 79 FR at 72252 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7–01–13); 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) (Automated Systems of Self-Regulatory Organizations) (File No. S7–29–89); 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (Automated Systems of Self-Regulatory Organizations) (File No. S7–12–91).

[7] Under Rule 6.45(b)(iv)(A), C2 shall designate those Permit Holders that C2 reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of C2's business continuity and disaster recovery plans (''Designated BCP/DR Participants''). Designated BCP/DR Participants will include all C2 Market-Makers and all C2 Permit Holders connected to the C2 primary data center and transacting non-Participant customer business, unless a C2 Permit Holder, other than a C2 Market-Maker, can demonstrate ready access to the back-up data center through another C2 Permit Holder that is a designated participant. As further discussed below, temporary requirements may be imposed on C2 Market-Makers during use of the back-up data center.

[8] Currently, under Rule 8.17(a)(i), for example, DPMs must provide continuous quotes in at least the lesser of 99% of the non-adjusted option series (as defined in Rule 8.5(a)(1)) or 100% of the non-adjusted option series minus one call-put pair with the term ''call-put pair'' referring to one call and one put that cover the same underlying instrument and have the same expiration date and exercise price, and assure that its disseminated market quotations are accurate. This obligation does not apply to intra-day add-on series on the day during which such series are added for trading. For purposes of Rule 8.17(a)(1), ''continuous'' means 90% of the time. If a technical failure or limitation of the System prevents a DPM from maintaining, or from communicating to C2, timely and accurate quotes in a series, the duration of such failure shall not be considered in determining whether that DPM has satisfied the 90% quoting standard with respect to the series. C2 may consider other exceptions to this obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. Compliance with this quoting obligation applies to all of a DPM's allocated classes collectively. C2 will determine compliance by a DPM with this quoting obligation on a monthly basis. However, determining compliance with this obligation on a monthly basis does not relieve a DPM from meeting this obligation on a daily basis, nor does it prohibit C2 from taking disciplinary action against DPM for failing to meet this obligation each trading day. *See* Rule 8.17(a)(1). Accordingly, under proposed Rule 6.45(b)(iv)(B), during use of the back-up data center, C2 could require that Market-Makers in AAPL provide continuous electronic quotes in up to 99% of the non-adjusted option series or 100% of the non-adjusted option serious minus one call-put pair.

[9] In accordance with Rule 1001(a)(2)(v) of Regulation SCI, C2 maintains written policies and procedures reasonably designed to ensure that its trading systems (including with respect to both C2's primary and back-up data center trading systems), have levels of capacity, integrity, resiliency, availability, and security adequate to maintain C2's operational capability and promote the maintenance of fair and orderly markets, including, but not limited to business continuity and disaster recovery plans that are reasonably designed to achieve next two-hour resumption of its critical SCI systems, as defined in Rule 1000 of Regulation SCI. *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7–01–13). Notably, C2 employs business continuity and disaster recovery standards reasonably designed to achieve two-hour resumption of all trading systems that are essential to conducting business on C2 and which C2 believes are reasonably designed to support resumption in a significantly shorter amount of time, including, but not limited to with respect to those systems that are essential to the trading of proprietary products and products exclusively licensed for trading on the Exchange.

C2.[10] C2 believes this extended authority would afford C2 with necessary flexibility to address unexpected contingencies that may arise if a disaster or other unusual circumstances occur, causing C2 to use the back-up data center and help ensure that C2 operates a fair and orderly market in the event of a market emergency. C2 also proposes non-substantive changes to the lettering in paragraph (b)(iv) to accommodate the addition of new Rule 6.45(b)(iv)(B). Accordingly, current Rule 6.45(b)(iv)(B) would become Rule 6.45(b)(iv)(C), and current Rule 6.45(b)(iv)(C) would become Rule 6.45(b)(iv)(D).

C2 also proposes to add Rule 6.45(c) (Deactivation of Certain Systems), which would provide that in the event of a systems disruption or malfunction, security intrusion, systems compliance issue, or other unusual circumstances, C2 may, in accordance with the Rules or if necessary to maintain fair and orderly markets or to protect investors, temporarily deactivate certain systems or systems functionalities that are not essential to conducting business on C2. Many of the systems and systems functionalities described in the Rules are provided optionally by C2 to enhance participants' trading experience, but are not required to be active under the Rules and are not necessary for C2 to conduct business.[11] As is described in the Rules, many of the C2's systems functionalities may be made available (or unavailable) by C2 on a class-by-class basis. Such systems and systems functionalities that are non-essential to conducting business on C2 include, but are not limited to, the Automated Improvement Mechanism (AIM) [12] and the Solicitation Auction Mechanism (SAM).[13]

In addition, the activation of other functionalities may not be described by the Rule, but could be suspended temporarily (*e.g.,* until the earlier of the end of a trading session or until systems disruptions could be remedied) if disruption or malfunction of that functionality were to interfere with the C2's ability to conduct business in a fair and orderly manner. For example, if a certain order type were to cause a wider system malfunction or a certain complex order product could not be created without triggering widespread systems issues,[14] C2 might announce, via its systems status page or otherwise, the suspension of the availability of that order type or complex product. If such an event impacts a non-essential system or system functionality, C2 may deem it necessary to maintain fair and orderly markets to deactivate that system or functionality until any issues are resolved to prevent any potential harm to investors. Proposed Rule 6.45(c) would also provide that C2 would notify market participants of any such deactivation, and subsequent reactivation, promptly and in a reasonable manner determined by the Exchange. C2 may make these notifications on the Systems Notification page on C2's Web site, via an Exchange-used messaging service such as SendWordNow,[15] Regulatory Circular, and/or other reasonable notification mechanisms.

Finally, C2 proposes Rule 6.45(d) (Connectivity Restriction), which would permit C2 to temporarily restrict a Permit Holder's or associated person's access to the trading system if it is determined by the President (or senior-level designee) of C2, that because of a systems issue, such access threatens C2's ability to operate systems essential to the maintenance of fair and orderly markets.[16] Such access would remain restricted until the end of the trading session or an earlier time if the President (or senior-level designee) of C2, in consultation with the affected Permit Holder(s), determines that lifting the restriction no longer poses a threat to C2's ability to operate systems essential to conducting business or continuing to maintain a fair and orderly market on C2 or to investors.[17] In the current electronic trading environment, if a Permit Holder's systems malfunctions or is compromised, it could disrupt C2's systems or market or harm other investors. For example, software malfunctions may pose a risk to C2's systems, investors, and the general public without proper risk controls. Proposed Rule 6.45(d) would simply give C2 the authority to activate additional risk controls to stem the access of a Permit Holder that has experienced a systems disruption or malfunction, which poses undue risk to C2.

2. Statutory Basis

C2 believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to C2 and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, C2 believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, C2 believes the proposed rule change is consistent with the Section 6(b)(5) [20] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to promote C2's ability to ensure the continued operation of a fair and orderly market in the event of a systems failure, disaster, or other unusual circumstances that might threaten the ability to conduct business on C2. C2 recognizes that switching operations to the back-up data center may occur in times of uncertainty or great volatility in the markets. It is at these times that the investors may have the greatest need for viable, trustworthy marketplaces. The proposed rule change seeks to ensure that such a marketplace will exist when most needed, and thus, C2 believes that the proposed rule protects investors in the most fundamental sense.

[10] C2 would make these notifications on the Systems Notification page on C2's Web site, via an Exchange-used messaging service, and/or other reasonable notification mechanisms.

[11] *See, e.g.,* Rules 6.10, 6.11, 6.13, 6.14, 6.17, 6.18, 6.51, and 6.52.

[12] *See generally* Rule 6.51.

[13] *See generally* Rule 6.52.

[14] For example, if the creation of a certain complex order product (*e.g.,* the October/November calendar spread in class XYZ) were to cause significant trading disruptions in an entire class (*e.g.,* trading in all of XYZ), C2 might determine to turn off calendar spreads or complex orders in general in the class in order to help ensure that regular trading (*i.e.,* trading of simple orders) in the class remained available.

[15] *See* C2 Regulatory Circular RG15–036 RG (Send Word Now Smart Notification Services); *see also* C2 Regulatory Circular RG15–037.

[16] In such cases, C2 would make efforts to contact the affected Permit Holder immediately before or contemporaneously with the restriction of access to the system to the extent possible while protecting C2's ability to operate systems essential to the maintenance of fair and orderly markets.

[17] In determining whether a Permit Holder's access threatens C2's ability to operate systems essential to the maintenance of fair and orderly markets and/or determining that lifting the restriction no longer poses a threat to C2's ability to operate systems essential to conducting business or continuing to maintain a fair and orderly market on the Exchange or to investors, a designee of the President of C2 would only be charged with making such determinations in the President of C2's absence. In such cases, the designee would be a senior executive (*i.e.* Vice President or above) of C2.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

In particular, C2 believes that proposed Rule 6.45(b)(iv)(B) allowing C2, during the use of the back-up data center to (1) establish heightened quoting obligations for Designated BCP/DR Participants in a class in which the Designated BCP/DR Participant is already an appointed Market-Maker up to the standards specified for DPMs specified in Rule 8.17(a) and/or (2) disallow the ability to deselect an appointment intraday in a class in which the Designated BCP/DR Participant is already an appointed Market-Maker would help ensure the maintenance of a fair and orderly market in the event of a disaster, which is in the interests of all market participants, investors, and the general public. C2 believes that adopting rules that help ensure that markets are open and available during times of turmoil and emergency is an important goal consistent with the Act. C2 also believes that deactivation of certain systems in proposed Rule 6.45(c), whether by rule or otherwise, in order to ensure that C2 is able to provide a fair and orderly market in the face of systems disruptions and malfunction is in the best interests of market participants, investors, and the general public.

Similarly, C2 believes that the proposed connectivity restriction in proposed Rule 6.45(d) would help ensure that C2 remains open and available to all market participants. C2 notes that other connectivity restrictions are already in place on the Exchange.[21] Furthermore, C2 believes that proposed Rule 6.45(d) is consistent with Section 6(b)(7) [22] of the Act, which requires C2 to adopt rules that provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. C2 notes that proposed Rule 6.45(d) is not aimed at denying access to a particular Permit Holder, but rather making sure that C2 remains accessible to all other Permit Holders that do not threaten C2's ability to conduct normal business operations. C2 notes that as soon as the President of C2 (or designee), working with the Permit Holder organization that poses a threat to C2, were able to confirm that the Permit Holder organization no longer posed such a threat, access to C2 would be restored to that Permit Holder. C2 believes that this is a fair result and is in the best interests of all market participants, investors, and the general public.

C2 also believes that the proposed rule change promotes just and equitable principles of trade by adding detail and clarity to the Rules. The proposed rule change seeks to provide additional clarity to C2's disaster recovery rules, putting all market participants on notice as to how C2 will function in case of significant systems disruption or other disaster situation. C2 is continuously updating the Rules to provide additional detail, clarity, and transparency regarding its operations and trading systems and regulatory authority. C2 believes that the adoption of detailed, clear, and transparent rules reduces burdens on competition and promotes just and equitable principles of trade. C2 also believes that adding greater detail to the Rules regarding C2's ability to ensure the continuous operation of the market and preserve the ability to conduct business on C2 will increase confidence in the markets and encourage wider participation in the markets and greater investment.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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. Rather, the proposed rule change will help ensure that competitive markets remain operative in the event of a systems failure or other disaster event. C2 notes that the proposed rule change is designed to provide C2 with authority to require market participants to participate in, and provide necessary liquidity to, the market to ensure that C2 functions in a fair and orderly manner in the event of a significant systems failure, disaster, or other unusual circumstances. Accordingly, C2 believes that the proposed rule change is designed to ensure fair and competitive markets at time when they may be most needed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

C2 neither solicited nor received written comments on 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:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2017–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[21] *See, e.g.,* Rules 6.34 (Participant Electronic Connectivity) and 6.48 (Technical Disconnect). Under Rule 6.34(b), C2 may limit the number of messages sent by Participants accessing C2 electronically in order to protect the integrity of the System. In addition, C2 may impose restrictions on the use of a computer connected through an application programming interface (''API'') if it believes such restrictions are necessary to ensure the proper performance of the system. Any such restrictions shall be objectively determined and submitted to the Commission for approval pursuant to a rule change filing under Section 19(b) of the Exchange Act. Under Rule 6.48(a), when a CBOE Application Server (''CAS'') loses communication with a Client Application such that a CAS does not receive an appropriate response to a Heartbeat Request within ''x'' period of time, the Technical Disconnect Mechanism will automatically logoff the Permit Holder's affected Client Application and automatically cancel all the Permit Holder's Market-Maker quotes, if applicable, and open orders with a time-in-force of ''day'' resting in the Book (''day orders''), if the Permit Holder enables that optional service, posted through the affected Client Application.

[22] 15 U.S.C. 78f(b)(7).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

All submissions should refer to File Number SR–C2–2017–025. 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–C2–2017–025, and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21405 Filed 10–4–17; 8:45 am]

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[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81774; File No. SR–NSCC–2017–015]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Amend and Clarify a Margin Charge Relating to CNS Fails Positions

September 29, 2017.

On August 11, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2017–015, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 24, 2017.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposed Rule Change

NSCC proposed to change its Rules & Procedures (''Rules'') [4] to (1) amend an existing fails charge (''CNS Fails Charge'') that applies to each NSCC member (''Member'') as part of each Member's required deposit (''Required Deposit'') [5] to the NSCC Clearing Fund; and (2) clarify NSCC's current practices with respect to the assessment and collection of the CNS Fails Charge.[6]

A. The Required Deposit and the CNS Fails Charge

NSCC collects Required Deposits from all Members in order to mitigate potential losses to NSCC associated with the liquidation of a Member's portfolio, if NSCC ceases to act for such Member.[7] In order to calculate each Member's Required Deposit, NSCC uses a risk-based margin methodology comprised of a number of risk-based component charges, including the CNS Fails Charge.[8]

NSCC currently calculates and collects the CNS Fails Charge from Members with positions that did not settle on the applicable settlement date (''Settlement Date'') [9] (''CNS Fails Positions'').[10] According to NSCC, NSCC imposes the CNS Fails Charge based on the Member's credit rating, as derived from NSCC's internal credit risk analysis (*i.e.,* the Credit Risk Rating Matrix or ''CRRM''),[11] in order to reflect the potential increase in credit risk from Members with a higher risk of default.[12] NSCC is exposed to credit and market risks when a Member does not satisfy its obligation to either pay its net settlement proceeds or deliver its securities due by the applicable Settlement Date.[13] Such exposures generally increase when the Member's risk of default increases, as reflected by the Member's credit rating derived from the CRRM.[14] Therefore, NSCC asserts that to reduce NSCC's credit risk exposures and to incentivize Members to satisfy their obligations relating to their outstanding trades on Settlement Date, NSCC collects the CNS Fails Charge as part of each Member's Required Deposit.[15]

This proposed rule change would amend the Rules regarding the CNS Fails Charge. Specifically, the proposed rule change would amend the Rules to add transparency and clarify NSCC's current practices with respect to the assessment and collection of this existing daily margin charge.[16]

B. Calculation of the CNS Fails Charge

Currently, for a Member with CNS Fails Positions, the CNS Fails Charge is calculated by multiplying the current market value of such Member's aggregate CNS Fails Positions by a percentage determined by the Member's CRRM rating.[17] For a Member that is rated 1 through 4 on the CRRM, the CNS Fails Charge is 5 percent of the Member's aggregate CNS Fails Positions.[18] For a Member that is rated 5 or 6 on the CRRM, the CNS Fails Charge is 10 percent of the Member's aggregate CNS Fails Positions.[19] For a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81439 (August 18, 2017), 82 FR 40176 (August 24, 2017) (SR–NSCC–2017–015) (''Notice'').

[4] *Available at http://www.dtcc.com/en/legal/rules-and-procedures.*

[5] A Member's Required Deposit is the daily margin deposit that Members are required to make to NSCC's clearing fund (''Clearing Fund''). Additional information on Required Deposits and the Clearing Fund can be found in NSCC's Rules. *Id.*

[6] Notice, 82 FR at 40176.

[7] When NSCC restricts a Member's access to services generally, NSCC is said to have ''ceased to act'' for the Member. Rule 46 (Restrictions on Access to Services) of the Rules sets out the circumstances under which NSCC may cease to act for a Member and the types of actions that NSCC may take. Rules, *supra* note 4.

[8] Notice, 82 FR at 40176.

[9] The Settlement Date refers to the standard settlement cycle, as set by the U.S. Securities and Exchange Commission, which is T+2. *See* Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017).

[10] Notice, 82 FR at 40176.

[11] The CRRM is a tool to help measure the credit risk that Members pose to NSCC. *See* Securities Exchange Act Release No. 80734 (May 19, 2017), 82 FR 24177 (May 25, 2017) (SR–FICC–2017–006). The CRRM produces a rating based on a scale from 1 (the strongest) to 7 (the weakest). *Id.* Members that fall within the weakest three rating categories (*i.e.,* 5, 6, and 7) are placed on NSCC's ''Watch List'' and may be subject to enhanced surveillance or additional margin charges. *Id.* The CRRM considers factors that are designed to collectively reflect the financial and operational condition of a Member. *Id.* These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity; and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. *Id.*

[12] Notice, 82 FR at 40176.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

Member that is rated 7 on the CRRM, NSCC charges 20 percent of the Member's aggregate CNS Fails Positions.[20]

NSCC explains that of the 20 percent charge, 10 percent is imposed pursuant to Procedure XV, Section I.(A)(1)(f) of the Rules, which describes NSCC's current CNS Fail Charge,[21] while the remaining 10 percent of the charge is imposed pursuant to Procedure XV, Section I.(B)(1) of the Rules, which authorizes NSCC's to require Members on the Watch List to make additional Clearing Fund deposits as determined by NSCC.[22] To clarify NSCC's current practices with respect to the assessment and collection of the CNS Fails Charge in the Rules, NSCC proposes to amend the Rules to clearly state that, for any Member that is rated 7 on the CRRM, the CNS Fails Charge would be 20 percent of the Member's aggregate CNS Fails Positions.[23]

C. Detailed Description of the Proposed Rule Changes

To effectuate the proposed change, NSCC proposes to amend Rule 1 of the Rules[24] to add a definition for CNS Fails Position. The proposed definition would provide that the term ''CNS Fails Position'' means either a Long Position or a Short Position that did not settle on the Settlement Date.[25] NSCC is also proposing to amend Procedure XV, Section I.(A)(1)(f) of the Rules to provide that a Member's Clearing Fund contribution shall include an amount that is calculated by multiplying the current market value for such Member's aggregate CNS Fails Positions by (i) 5 percent for Members rated 1 through 4 on the CRRM; (ii) 10 percent for Members rated 5 or 6 on the CRRM; or (iii) 20 percent for Members rated 7 on the CRRM.[26]

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[27] 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 rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act and Rule 17Ad–22(e)(23)(i)[28] under the Act, as discussed below.

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act, requires, in part, that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[29]

The proposed rule change would clarify and provide additional transparency to NSCC members regarding NSCC's current practices surrounding the assessment and collection of the CNS Fails Charges associated with each Member. Specifically, the proposed Rule would clearly state that Members with a CRRM rating of 7 are charged 20 percent of the Member's aggregate CNS Fails Positions (instead of the less transparent approach of charging 10 percent pursuant to the CNS Fails Charge and 10 pursuant to a separate Watch List charge). By doing so, this proposed rule change would help the Rules to be more transparent, accurate, and clear, which would better enable Members to understand their respective rights and obligations with respect to their NSCC membership and, in turn, support NSCC's clearance and settlement of securities transactions. Therefore, the Commission believes that the proposed rule change related to the CNS Fails Charge would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[30]

B. Consistency With Rule 17Ad–22(e)(23)(i)

Rule 17Ad–22(e)(23)(i) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures.[31]

As described above, the proposed rule change seeks to clarify in NSCC's Rules the current practices with respect to the assessment and collection of the CNS Fails Charge. Specifically, NSCC proposes to amend the Rules to include a definition for CNS Fails Position and clearly state NSCC's current practices regarding the assessment and collection of the CNS Fails Charge, including the percentages that NSCC charges Members according to their CRRM rating. In doing so, the Commission believes that proposed rule change would help promote disclosure of relevant rules and material procedures relating to the CNS Fails Charge, consistent with Rule 17Ad–22(e)(23)(i) under the Act.[32]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act[33] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–NSCC–2017–015 be, and hereby is, *approved*.[34]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21409 Filed 10–4–17; 8:45 am]

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[20] *Id.*

[21] *Id.*

[22] Notice, 82 FR at 40177.

[23] *Id.* NSCC states that Members which are not rated by the CRRM are not subject to the CNS Fails Charge; however, these Members can be placed on the Watch List as deemed necessary by NSCC to protect itself and its Members. *Id.*

[24] Rules, *supra* note 4.

[25] Notice, 82 FR at 40176.

[26] *Id.*

[27] 15 U.S.C. 78s(b)(2)(C).

[28] 15 U.S.C. 78q–1(b)(3)(F); 17 CFR 240.17Ad–22(e)(23)(i).

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] *Id.*

[31] 17 CFR 240.17Ad–22(e)(23)(i).

[32] *Id.*

[33] 15 U.S.C. 78q–1.

[34] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81781; File No. SR–FINRA–2017–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to Capital Acquisition Broker Rules 203 (Engaging in Distribution and Solicitation Activities With Government Entities) and 458 (Books and Records Requirements for Government Distribution and Solicitation Activities)

September 29, 2017.

I. Introduction

On August 17, 2017, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 adopt Capital Acquisition Broker Rules 203 (Engaging in Distribution and Solicitation Activities with Government

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Entities) and 458 (Books and Records Requirements for Government Distribution and Solicitation Activities). These rules would apply established ''pay-to-play'' and related recordkeeping rules to the activities of member firms that have elected to be governed by the Capital Acquisition Broker (''CAB'') [3] Rules and that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.

The proposed rule change was published for comment in the **Federal Register** on August 24, 2017.[4] The public comment period closed on September 14, 2017. No comment letters were received in response to the Notice. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As discussed in the Notice and described below, the proposed rule change seeks to clarify that FINRA's existing pay-to-play rules and related recordkeeping requirements apply to CABs. Under the proposed rules, CABs would be subject to the same restrictions designed to halt pay-to-play practices as non-CAB member firms, which would effectively allow them to engage in distribution and solicitation activities with government entities on behalf of investment advisers.[5]

A. Pay-to-Play Rules

In July 2010, the SEC adopted Rule 206(4)–5 under the Investment Advisers Act of 1940 addressing pay-to-play practices by investment advisers (the ''SEC Pay-to-Play Rule'').[6] The SEC Pay-to-Play Rule prohibits, in part, an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of the investment adviser unless the person is a ''regulated person.'' [7] A ''regulated person'' includes a member firm, provided that: (a) FINRA rules prohibit member firms from engaging in distribution or solicitation activities if political contributions have been made; and (b) the SEC finds, by order, that such rules impose substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers and that such rules are consistent with the objectives of the SEC Pay-to-Play Rule.[8]

Based on the framework of the SEC Pay-to-Play Rule, FINRA proposed Rules 2030 and 4580, which establish a comprehensive regime to regulate the activities of FINRA member firms that engage in distribution or solicitation activities with government entities on behalf of investment advisers, and to deter member firms from engaging in pay-to-play practices.[9] The SEC approved these rules on August 25, 2016,[10] and later found that Rule 2030 imposes substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers, and that it is consistent with the objectives of the SEC Pay-to-Play Rule.[11] Rules 2030 and 4580 became effective on August 20, 2017.[12]

B. FINRA CAB Rules

On August 18, 2016, the SEC approved a separate set of FINRA rules for firms that meet the definition of a CAB and that elect to be governed under this rule set.[13] Member firms that elect to be governed under the CAB rule set are not permitted, among other things, to carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, or engage in proprietary trading or market-making.

The CAB Rules became effective on April 14, 2017. In order to provide new CAB applicants with lead time to apply for FINRA membership and obtain the necessary qualifications and registrations, CAB Rules 101–125 became effective on January 3, 2017.

C. Addition of FINRA Pay-to-Play Rules to CAB Rulebook

The CAB Rules subject CABs to a number of FINRA Rules, but do not expressly provide that FINRA Rules 2030 and 4580 apply to CABs. As explained by FINRA in the Notice, the proposed rule change sought to make clear that CABs are subject to FINRA's pay-to-play rule, which would make CABs, like non-CABs, ''regulated persons'' that are subject to restrictions designed to halt pay-to-play practices and thus can engage in distribution and solicitation activities with government entities on behalf of investment advisers in accordance with the SEC's Pay-to-Play Rule.

To make this clarification, FINRA proposed the addition of CAB Rules 203 and 458 to the CAB rule book. CAB Rule 203 would provide that all capital acquisition brokers are subject to existing FINRA Rule 2030. CAB Rule 458 would provide that all capital acquisition brokers are subject to existing FINRA Rule 4580.

III. Comment Summary

As noted above, no comment letters were received on the proposed rule change.

IV. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[14] The Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[15] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

[3] CABs are member firms that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions. *See FINRA Regulatory Notice* 16–37 (October 2016), at 1.

[4] *See* Exchange Act Release No. 81438 (August 17, 2017), 82 FR 40181 (August 24, 2017) (Notice of Filing of a Proposed Rule Change Relating to Capital Acquisition Broker Rules 203 and 458) (''Notice'').

[5] ''Pay-to-play'' practices typically involve a person making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials as a quid pro quo for the award of government contracts. *See* FINRA Regulatory Notice 16–40 (October 2016) at 9, note 1.

[6] *See* Investment Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018 (July 14, 2010) (Political Contributions by Certain Investment Advisers). *See also* Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (Rules Implementing Amendments to the Investment Advisers Act of 1940); Investment Advisers Act Release No. 3418 (June 8, 2012), 77 FR 35263 (June 13, 2012) (Political Contributions by Certain Investment Advisers; Ban on Third Party Solicitation; Extension of Compliance Date).

[7] *See* Investment Advisers Act Rule 206(4)–5(a)(2)(i)(A), 17 CFR 275.206(4)–5(a)(2)(i)(A).

[8] *See* Investment Advisers Act Rule 206(4)–5(f)(9), 17 CFR 275.206(4)–5(f)(9). A ''regulated person'' also includes SEC-registered investment advisers and SEC-registered municipal advisors, subject to specified conditions.

[9] *See* Securities Exchange Act Release No. 76767 (December 24, 2015), 80 FR 81650 (December 30, 2015).

[10] *See* Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR 60051 (August 31, 2016).

[11] *See* Investment Advisers Act Release No. 4532 (September 20, 2016), 81 FR 66526 (September 28, 2016).

[12] *See FINRA Regulatory Notice* 16–40 (October 2016).

[13] *See* Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (Order Approving Rule Change as Modified by Amendment Nos. 1 and 2 to Adopt FINRA Capital Acquisition Broker Rules).

[14] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78o–3(b)(6).

principles of trade, and, in general, to protect investors and the public interest. Specifically, the Commission finds that the proposed rule change is consistent with the Exchange Act for the reasons expressed in the Order Approving a Proposed Rule Change to Adopt FINRA Rule 2030—namely, that this proposed rule will discourage CABs, like non-CAB member firms, from engaging in pay-to-play practices that may create market distortions, impede a free and open market, and harm investors and the public interest.[16]

The Commission agrees with FINRA that the proposed rule change will clarify that CABs and non-CAB member firms are subject to the same rule regime as they engage in distribution or solicitation activities with government entities on behalf of investment advisers. Without the proposed rule change, under the SEC's Pay-to-Play Rule, CABs could not be retained by investment advisers to engage in distribution and solicitation activities with government entities on their behalf because the rule set for CABs does not expressly provide that FINRA Rule 2030 applies to CABs. The Commission also agrees with FINRA that having such rules in place will deter CABs from engaging in pay-to-play practices, and that clarifying the application of FINRA Rules 2030 and 4580 to CABs is a more effective regulatory response to concerns regarding third-party solicitations than an outright ban on such activity.

Lastly, the Commission agrees with FINRA that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Notice, FINRA explained that the proposed rule change would subject CABs to the same pay-to-play rules as non-CAB member firms, and therefore, the economic impacts associated with the proposal were contemplated in the Economic Impact Assessment accompanying the filing of FINRA Rules 2030 and 4580. FINRA's Economic Impact Assessment in the Proposing Release for FINRA Rules 2030 and 4580 considered the impact on all FINRA member firms, including firms that at that time engaged solely in activities that were later deemed permissible for CABs.[17]

Taking into consideration the foregoing, the Commission believes that the proposal is consistent with the Exchange Act. The Commission believes that the proposal will help protect investors and the public interest by, among other things, clarifying that CABs and non-CAB member firms are subject to the same rule regime as they engage in distribution or solicitation activities with government entities on behalf of investment advisers, and by deterring pay-to-play practices. Accordingly, the Commission believes that the approach proposed by FINRA is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act[18] that the proposal (SR–FINRA–2017–027), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman

Assistant Secretary.

[FR Doc. 2017–21413 Filed 10–4–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81764; File No. SR–CHX–2017–13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Sponsored Access

September 29, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on September 15, 2017, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange (''CHX Rules'') related to Sponsored Access. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX 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 Changes

1. Purpose

The Exchange proposes to amend CHX Rules to effect the following changes:

- Amend Article 1, Rule 1 to adopt the following defined terms: ''Sponsoring Participant,'' ''Sponsored Person'' and ''Sponsored Access.''
- Amend Article 5, Rule 3 to permit Sponsoring Participants to provide Sponsored Access to the Exchange to Sponsored Persons, subject to enhanced requirements. Current Article 5, Rule 3 only permits Sponsoring Participants to provide authorized access to the Exchange's trading facilities to non-Participant[3] broker-dealers. The proposal would permit Participants, non-Participants, broker-dealers and firms that are not broker-dealers to receive Sponsored Access to the Exchange.[4]

[16] *See* Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR at 60063 (August 31, 2016).

[17] *See* Securities Exchange Act Release No. 76767 (December 24, 2015), 80 FR 81650, 81656–81658 (December 30, 2015) (at the time of the Economic Impact Assessment, the SEC had not approved the separate set of rules for CABs).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Participant'' is a ''member'' of the Exchange for the purposes of the Act. *See* CHX Article 1, Rule 1(s).

[4] The Exchange notes that Nasdaq Stock Market (''Nasdaq'') permits its members to provide Sponsored Access to a ''Sponsored Participant,'' which may be a non-broker-dealer, subject to the requirements of Nasdaq Rule 4615. According to Nasdaq, a ''Sponsored Participant'' may be a member, non-member, a broker-dealer or not a broker-dealer, such as ''a hedge fund, mutual fund, bank or insurance company.'' *See* Exchange Act Release No. 76449 (November 17, 2015), 80 FR 73011, 73012 (November 23, 2015) (SR–NASDAQ–2015–140).

(1) Current Article 5, Rule 3

Current Article 5, Rule 3(a) provides that a Sponsoring Participant may provide authorized access to the Exchange for a non-Participant broker-dealer, through a clearing arrangement or otherwise, only if the Sponsoring Participant, the non-Participant broker-dealer and the Exchange (as appropriate) enter into one or more written agreements, in a form acceptable to the Exchange, prior to any access to the Exchange, that contain all of the following terms: (1) All orders submitted by the non-Participant broker-dealer, and any executions resulting from those orders, are binding in all respects on the Sponsoring Participant; (2) the Sponsoring Participant is responsible for all actions taken and fees incurred in connection with any order submitted or transaction executed by the non-Participant broker-dealer (and any person acting on behalf of the non-Participant broker-dealer); (3) in all matters relating to the non-Participant broker-dealer's access to the Exchange and its use of Exchange facilities, the Exchange shall communicate with the Sponsoring Participant and shall not be required to communicate with the non-Participant broker-dealer at any time; (4) the non-Participant broker-dealer agrees that it will have reasonable procedures to maintain the physical security of the equipment used to access the Exchange to prevent improper use of, or access to, the Exchange; and (5) the Sponsoring Participant agrees that it will indemnify and hold the Exchange harmless from any liability, loss, claim or expense which the Exchange may incur in connection with the agreement. In addition, current Article 5, Rule 3(b) provides that the Sponsoring Participant must provide signed copies of the agreements required by section (a) to the Exchange prior to the non-participant's access to the Exchange through the Sponsoring Participant.

The Exchange now proposes to amend CHX Rules to permit Sponsoring Participants to provide Sponsored Access to the Exchange to any Sponsored Person, subject to the requirements of amended Article 5, Rule 3. Amended Article 5, Rule 3 is based, in part, on Nasdaq Rule 4615. The Exchange believes that the proposed rule change will permit a broader group of market participants, such as institutional investors, to obtain Sponsored Access to the Exchange, which may result in reduced transaction costs to such market participants in furtherance of the protection investors and the public interest.

(2) Proposed Definitions

Proposed CHX Article 1, Rule 1(vv) provides that ''Sponsored Person'' means a person which has entered into a sponsorship arrangement with a Sponsoring Participant pursuant to amended Article 5, Rule 3.

Proposed CHX Article 1, Rule 1(ww) provides that a ''Sponsoring Participant'' means a Participant who has been designated by a Sponsored Person to execute, clear and settle transactions resulting from the Trading Facilities. The rule continues by providing that the Sponsoring Participant shall be either (1) a Clearing Participant [5] or (2) a correspondent firm with a clearing arrangement with a Clearing Participant.

Proposed Article 1, Rule 1(xx) provides that ''Sponsored Access'' means an arrangement whereby a Sponsoring Participant permits its Sponsored Persons to enter orders into the Matching System that bypass the Sponsoring Participant's trading system and are routed directly to the Exchange, including through a service bureau or other third party technology provider. The Exchange is proposing to adopt a definition for ''Sponsored Access'' to clarify the type of market access arrangement that is subject to amended Article 5, Rule 3. This definition was derived from the Commission's description of Sponsored Access used in the release approving the Market Access Rule.[6]

(3) Amended Article 5, Rule 3

The Exchange proposes to amend current Article 5, Rule 3 to permit Sponsoring Participants to provide Sponsored Access to Sponsored Persons, subject to the requirements of amended Article 5, Rule 3. Initially, the Exchange proposes to amend the title to Rule 3 to reflect that it applies to ''Sponsored Persons.''

Under paragraph (a), the Exchange proposes to (1) replace a reference to ''Participant (the 'Sponsoring Participant')'' with ''Sponsoring Participant''; (2) replace reference to ''authorized access'' with the proposed defined term ''Sponsored Access''; (3) define the required written agreements between Sponsoring Participant, Sponsored Person and the Exchange that permit a Sponsored Person to receive Sponsored Access to the Exchange as ''Sponsored Access Agreements.'' Under both paragraphs (a) and (b), as well as Article 5, Rule 4 (Denial of Access),[7] the Exchange proposes to replace references to the terms ''non-Participant broker-dealer'' or ''non-Participant'' with ''Sponsored Person.''

The Exchange further proposes to adopt proposed paragraphs (a)(6)–(11) to provide additional terms that must be included in Sponsored Access Agreements. Proposed paragraph (a)(6) provides that the Sponsoring Participant and Sponsored Person must comply with Rule 15c3–5 under the Exchange Act.[8] Pursuant to amended Article 5, Rule 3, the Sponsoring Participant is responsible for the activities of the Sponsored Person. Sponsoring Participants may have multiple Sponsored Access relationships in place at a given time. The Exchange's examination program assesses compliance with Article 5, Rule 3, among other rules. As such, proposed paragraph (a)(6) clarifies the Sponsoring Participant's and Sponsored Person's obligations to comply with the Market Access Rule, with which Participants are currently required to comply. The Exchange believes that specifying the obligation to comply with the Market Access Rule specifically will reinforce that amended Article 5, Rule 3 presupposes compliance with the Market Access Rule.

Proposed paragraph (a)(7) provides that the Sponsoring Participant shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures and the Sponsored Person shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures with regard to the

[5] CHX Article 1, Rule 1(ee) defines ''Clearing Participant'' as ''a Participant which has been admitted to membership in a Qualified Clearing Agency pursuant to the provisions of the Rules of the Qualified Clearing Agency.'' Current CHX Article 1, Rule 1(ff) defines ''Qualified Clearing Agency'' as ''a clearing agency as defined in Section 3(a)(23) of the Exchange Act which is registered with the Commission pursuant to the provisions of Section 17A(b)(2) of the Exchange Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation and affirmation services.

[6] The Market Access Rule, among other things, requires broker-dealers providing others with access to an exchange or alternative trading system to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of providing such access. *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[7] Incidentally, under current Article 5, Rule 4(a), the Exchange proposes to replace reference to ''Market Regulation Department'' with ''Regulatory Operations Division.'' Since the Market Regulation Department is a department of the Regulatory Operations Division, the Exchange believes that it is appropriate for denial of access authority to rest more broadly with the Regulatory Operations Division.

[8] 17 CFR 240.15c3–5.

Exchange, as if the Sponsored Person were a Participant. The Exchange believes that proposed paragraph (a)(7) will ensure that Sponsored Persons that are non-Participants are subject to the same regulatory requirements as Participants.

Proposed paragraphs (a)(8)–(11) would impose obligations on Sponsored Persons to ensure appropriate use of, and security of access to, the Exchange's trading facilities, as well as compliance with the applicable Sponsored Access Agreement. Specifically, proposed paragraph (a)(8) provides that the Sponsored Person shall maintain, keep current and provide to the Sponsoring Participant a list of individuals authorized to obtain Sponsored Access to the Exchange on behalf of the Sponsored Person. Proposed paragraph (a)(9) provides that the Sponsored Person shall familiarize its authorized individuals with all of the Sponsored Person's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Exchange pursuant to any Sponsored Access Agreement. Proposed paragraph (a)(10) provides that the Sponsored Person may not permit anyone other than authorized individuals to use or obtain access to the Exchange pursuant to any Sponsored Access Agreement. Proposed paragraph (a)(11) provides that the Sponsored Person shall establish, maintain and enforce written supervisory procedures and a supervisory system that is reasonably designed to ensure that the use or access to the Exchange that takes place pursuant to a Sponsored Access Agreement and by any Sponsored Person or authorized individual complies with the terms of the Sponsored Access Agreement and all applicable CHX and SEC rules and regulations.

(4) Operative Date

The Exchange proposes to make the proposed rule change operative on a date after the 30-day preoperative delay and pursuant to at least one week's notice to Participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[9] and furthers the objectives of Section 6(b)(5) in particular,[10] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments and perfect the mechanisms of a free and open market by permitting Sponsoring Participants to provide Sponsored Access to customers that are not broker-dealers, such as institutional investors, as well as broker-dealers that are not Participants, which may result in reduced transaction costs to such market participants in furtherance of the protection investors and the public interest.

Also, the Exchange believes that the additional required terms for Sponsored Access Agreements under proposed Article 5, Rule 3(a)(6)–(11) will protect investors and the public interest by enhancing the ability of the Exchange to monitor, enforce and compel compliance with CHX Rules and the Market Access Rule by Sponsoring Participants and Sponsored Persons. In particular, proposed paragraph (a)(6) will clarify that any Sponsored Access arrangement under amended Article 5, Rule 3 must be effected in accordance with the Market Access Rule; proposed paragraph (a)(7) will ensure that both Participant and non-Participant Sponsored Persons will be subject to the CHX Rules; and proposed paragraphs (a)(8)–(11) will impose affirmative obligations on Sponsored Persons that will enhance the security of the Exchange.

Moreover, the Exchange believes that proposed definitions of ''Sponsoring Participant,'' ''Sponsored Person,'' ''Sponsored Access'' and ''Sponsored Access Agreements'' provide clarity to the meaning and scope of amended Article 5, Rule 3, which furthers the objectives of Section 6(b)(1)[11] in that it further enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement of 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 Exchange notes that other national securities exchanges, such as Nasdaq,[12] currently permit its members to provide Sponsored Access to members, non-members, broker-dealers and firms that are not broker-dealers. As such, the proposal will enhance competition among the national securities exchanges by permitting the Exchange to allow Sponsoring Participants to provide Sponsored Access to its customers on similar terms.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes 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) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[15] to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(1).

[12] *See supra* note 4.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 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.

[15] 15 U.S.C. 78s(b)(2)(B).

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–CHX–2017–13 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–CHX–2017–13. 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 changes 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 CHX. 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–CHX–2017–13 and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21401 Filed 10–4–17; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81770; File No. SR–GEMX–2017–43]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 716(c) on the Block Order Mechanism

September 29, 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 September 18, 2017, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 716(c) to more accurately describe the allocation methodology used in the Block Order Mechanism, and add language regarding how the block execution price is determined.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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 Block Order Mechanism is a process by which a member can obtain liquidity for the execution of block-sized orders,[3] defined as orders for fifty contracts or more.[4] When an order is entered in the Block Order Mechanism, that order is exposed to members who are given an opportunity to respond with the prices and sizes at which they would be willing to trade with the block-sized order.[5] The exposure period is designated by the Exchange via circular, but must be no less than 100 milliseconds and no more than 1 second.[6] At the conclusion of the exposure period, either an execution will occur at a single block execution price,[7] or the order will be cancelled.[8] The purpose of the proposed rule change is to amend Rule 716(c) to more accurately describe the allocation methodology used in the Block Order Mechanism, and add language regarding how the block execution price is determined. The Exchange believes that these changes will increase transparency around the operation of the Block Order Mechanism to the benefit of members and market participants.

Currently, Rule 716(c)(2)(ii) provides that Responses, quotes, and Professional Orders[9] at the block execution price will participate in the execution of the block-size order according to Rule 713(e)—*i.e.,* the Exchange's regular allocation rule. As implemented today, however, interest that is executed in the Block Order Mechanism follows the customer priority pro-rata allocation methodology designed for the Exchange's auction mechanisms, including, for example, the Facilitation Mechanism,[10] Solicited Order Mechanism,[11] and Price Improvement Mechanism,[12] with the exception that those two-sided auction mechanisms also allocate contracts against the contra order. This auction allocation methodology is similar to the Exchange's regular allocation methodology but does not provide enhanced allocations to the Primary Market Maker (''PMM'') pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 716(c).

[4] *See* Rule 716(a).

[5] A ''Response'' is an electronic message that is sent by members in response to a broadcast message. *See* Rule 716(b).

[6] *See* Supplementary Material .04 to Rule 716.

[7] Responses and orders and quotes on the order book at the time the block order is executed that are priced better than the block execution price are executed at the block execution price. *See* Rule 716(c)(2)(i).

[8] *See* Rule 716(c)(2).

[9] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* Rule 100(a)(37C).

[10] *See* Rule 716(d).

[11] *See* Rule 716(e).

[12] *See* Rule 723.

Rule 713(e) and Supplementary Material .01(b) to Rule 713.[13] The Exchange therefore proposes to amend Rule 716(c)(2)(ii) to provide that, at the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first in time priority, and then quotes, Professional Orders, and Professional Responses will participate in the execution of the block-size order based upon the percentage of the total number of contracts available at the block execution price that is represented by the size of the quote, Professional Order, or Professional Response. In addition, the Exchange proposes to specify in Rule 716(c)(2)(i) that interest that is priced better than the block execution price is executed in full. In particular, the Exchange proposes to amend this rule to state that bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price. Although Rule 716(c)(2)(ii) described above explains how allocations are handled at the block execution price, the Exchange believes that additional the additional clarity that interest that is priced better than the block execution price is executed in full would be helpful to members. With these two proposed changes, Rule 716(c) will more accurately describe the allocation methodology used in the Block Order Mechanism.

Furthermore, the Exchange proposes add language to Rule 716(c)(2)(i) that explains the price at which orders entered into the Block Order Mechanism are executed. In particular, the Exchange proposes to state that Responses, orders, and quotes will be executed at a single block execution price that is the price for the block-size order at which the maximum number of contracts can be executed consistent with the member's instruction. For example, if a member enters a block-sized order to buy 100 contracts at $1.00 into the Block Order Mechanism, and members enter Response A to sell 50 contracts at $0.90 and Response B to sell 40 contracts at $0.95, the block execution price would be $0.95 as this is the price at which the maximum number of contracts could be executed. The block-sized order and both Responses would then be executed at this single block execution price. Responses A and B would be executed in full since there is sufficient size to execute both Responses against the block-size order. In addition, if two other members also enter Responses C (Priority Customer) and D (non-Priority Customer) to sell at $0.98 for 10 contracts each, the block execution price would be $0.98 as additional contracts could be executed at that price. In that instance, Responses A and B, which are priced better than the block execution price, would be executed in full, while Responses B and C, which are priced at the block execution price, would participate in accordance with the allocation methodology described in this proposed rule change—*i.e.,* the remaining 10 contracts would go to Response C, which is a Priority Customer Response. The Block Order Mechanism is designed to provide an opportunity for members to receive liquidity for their block-sized orders and therefore trades at a price that allows the maximum number of contracts of such order to be executed against Responses entered to trade against the block-size order and interest on the Exchange's order book. The Exchange believes that describing how the block execution price is determined in Rule 716(c)(2)(i) will increase transparency around pricing of executions in the Block Order Mechanism.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[14] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[15] because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to the allocation language in Rule 716(c)(2)(i)–(ii) are consistent with the protection of investors and the public interest as the proposed allocation language more accurately reflects the Exchange's process for allocating contracts executed in the Block Order Mechanism. Although the Exchange's allocation rule for the Block Order Mechanism currently references the allocation process for regular trading, the allocation methodology does not include certain parts of the regular allocation procedure. In particular, the Exchange does not grant any special allocation to the PMM for interest executed in the Block Order Mechanism. The Exchange believes that it is appropriate to not provide an enhanced allocation entitlement to the PMM for interest executed in the Block Order Mechanism, as the Block Order Mechanism provides an auction process that does not rely on market maker quoting and other obligations to source liquidity. Furthermore, the Exchange believes that it is helpful to explain in this rule that interest that is priced better than the block execution price would be executed in full. The allocation process used for the Block Order Mechanism is similar to how the Exchange allocates contracts in other auction mechanisms, including, for example, the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism, with the exception that those two-sided auction mechanisms also allocate contracts against the contra order.[16]

The Exchange also believes that the proposed changes to describe how the block execution price is determined is consistent with the protection of investors and the public interest as this change will increase transparency around the price at which interest is executed in the Block Order Mechanism. As explained above, the Block Order Mechanism is designed to provide an opportunity for members to receive liquidity for their block-sized orders and therefore trades at a price that allows the maximum number of contracts of such order to be executed against Responses entered to trade against the block-size order and interest on the Exchange's order book. The Exchange believes that describing how the block execution price is determined in Rule 716(c)(2)(i) will increase transparency around pricing of executions in the Block Order Mechanism.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance

[13] Supplementary Material .01(b) to Rule 713 provides that, if the PMM is quoting at the best price, it has participation rights equal to the greater of the proportion of the total size at the best price represented by the size of its quote, or a percentage allocation entitlement based on the number of other Professional Orders and market maker quotations at the best price.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* supra notes 10–12 and accompanying text.

[17] 15 U.S.C. 78f(b)(8).

of the purposes of the Act. The proposed rule change is designed to correct the Exchange's rules to more accurately reflect the handling of auctions in the Block Order Mechanism. No changes are proposed to the operation of the Exchange's trading system, and no members will be impacted by the proposed rule, which merely reflects current functionality offered to members that trade in the Block Order Mechanism. The proposed rule change is therefore not designed to impose any significant burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange notes that a waiver is consistent with the protection of investors and the public interest because it will allow the Exchange to correct its Block Order Mechanism rules to reflect the current functionality of the system without undue delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

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–GEMX–2017–43 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–GEMX–2017–43. 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–GEMX–2017–43 and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

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[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 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.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81766; File No. SR–NYSEArca–2017–86]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the JPMorgan Managed Futures ETF Under NYSE Arca Rule 8.600–E

September 29, 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 September 14, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''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 list and trade shares of the following under NYSE Arca Rule 8.600–E (''Managed Fund Shares''): JPMorgan Managed Futures ETF. The proposed 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 list and trade shares (''Shares'') of the following under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares [3] on the Exchange: [4] JPMorgan Managed Futures ETF (the ''Fund'').[5]

The Fund is a series of J.P. Morgan Exchange-Traded Fund Trust (''Trust''), a Delaware statutory trust. J.P. Morgan Investment Management Inc. (''Adviser'' or ''Administrator'') will be the investment adviser to the Fund and also provide administrative services for and oversee the other service providers for the Fund. The Adviser is a wholly-owned subsidiary of JPMorgan Asset Management Holdings Inc., which is an indirect, wholly-owned subsidiary of JPMorgan Chase & Co. (''JPMorgan Chase''), a bank holding company. JPMorgan Distribution Services, Inc. (''Distributor'') will be the distributor of the Fund's Shares.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

JPMorgan Managed Futures ETF

According to the Registration Statement, the Fund will seek to provide long-term total return. Through the Adviser's systematic investment process, the Fund seeks to achieve its investment objective by investing globally to exploit opportunities across a broad range of asset classes including, but not limited to, equities, fixed income, currency and commodities based on the adviser's assessment of their relative attractiveness. Within these strategies, the Adviser believes it has identified (and will continue to identify) a set of investment return sources that have a low correlation to each other and to traditional markets and have distinct risk and return profiles (each a ''return factor'').

Under normal market conditions,[7] the Fund will implement its ''Managed Futures'' strategy to access certain return factors. Each return factor represents a potential source of investment return that results from, among other things, assuming a particular risk or taking advantage of a behavioral bias. The Adviser believes that, in general, the Fund's investment returns are attributable to the individual contributions of the various return factors. By employing this return factor based approach, the Fund seeks to provide positive total returns over time while maintaining a relatively low correlation with traditional markets.

The exposure to individual return factors may vary based on the market opportunity of the individual return factors. Additional return factors may be identified over time. For example, the return factors that the Adviser may utilize include, but are not limited to, the following:

- Carry—In the carry strategies, the Fund seeks to take a short position in a low yielding instrument while also taking a long position in another instrument that is higher yielding. The strategies seek to capture the tendency for higher yielding assets to provide higher returns than lower-yielding assets. The Fund implements these

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission has previously approved listing and trading on the Exchange of other series of the Trust that are actively managed funds under Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 79683 (December 23, 2016) (SR–NYSEArca–2016–82) (order approving a proposed rule change to list and trade shares of the JPMorgan Diversified Event Driven ETF under NYSE Arca Equities Rule 8.600); 77904 (May 25, 2016) (SR–NYSEArca–2016–17) (order approving a proposed rule change to list and trade of shares of the JPMorgan Diversified Alternative ETF under NYSE Arca Equities Rule 8.600).

[5] The Trust is registered under the 1940 Act. On July 18, 2017, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–191837 and 811–22903) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 31990 (February 9, 2016) (''Exemptive Order''). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

strategies through derivatives instead of holding long and shorting securities physically; [8]

• Momentum—These strategies seek to capture the tendency that an asset's recent performance based on its price will continue in the near future. The Fund will seek to choose investments that have performed relatively well over those that have underperformed over the medium-term.[9]

The Fund will invest its assets globally to gain exposure, either directly or through the use of derivatives, to equity securities (across market capitalizations) in developed markets, debt securities (including below investment grade or high yield debt securities), commodities (through its subsidiary as described below) and currencies (including in emerging markets). The Fund may use both long and short positions (achieved primarily through the use of financial derivative instruments). The Fund may maintain a total net long market exposure, meaning that the Fund's long exposure will be greater than its short exposure, neutral aggregate exposure, where the long and short exposure will be equal, or total net short exposure, meaning that the Fund's short exposure will be greater than its long exposure. In addition, the Fund may have net long or net short exposure to one or more industry sectors, individual markets and/or currencies based on the Adviser's view of whether a particular sector, market or currency is expected to outperform or underperform.

The Adviser will make use of derivatives including swaps, futures, options and forward contracts, in implementing its strategies. Under normal market conditions, the Adviser currently expects that a significant portion of the Fund's exposure will be attained through the use of derivatives in addition to its exposure through direct investments. Derivatives, which are instruments that have a value based on another instrument, exchange rate or index, will primarily be used as an efficient means of implementing a particular strategy in order to gain exposure to a desired return factor.

Derivatives may also be used to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments and/or for risk management. As a result of the Fund's use of derivatives and to serve as collateral, the Fund may hold significant amounts of U.S. Treasury obligations, including Treasury bills, bonds and notes and other obligations issued or guaranteed by the U.S. Treasury, obligations of other sovereign governments or supranational entities, other short-term investments, including money market funds and foreign currencies in which certain derivatives are denominated.

The amount that may be invested in any one instrument will vary and generally depend on the return factors employed by the Adviser at that time. However, there are no stated percentage limitations on the amount that can be invested in any one type of instrument, and the Adviser may, at times, focus on a smaller number of instruments.[10] Moreover, the Fund is generally unconstrained by any particular capitalization, style or sector and may invest in any region or country. The Fund may have both long and short exposure to these instruments. Given the complexity of the investments and strategies of the Fund, the Adviser will make use of quantitative models and information and data supplied by third parties to, among other things, help determine the portfolio's weightings among various investments and construct sets of transactions and investments.

The Fund will purchase a particular instrument when the Adviser believes that such instrument will allow the Fund to gain the desired exposure to a return factor. Conversely, the Fund will consider selling a particular instrument when it no longer provides the desired exposure to a return factor. In addition, investment decisions will take into account a return factor's contribution to the Fund's overall volatility. In allocating assets, the Adviser seeks to approximately balance risk to the individual return factors over the long term, although the exposure to individual return factors will vary based on, among other things, the opportunity the Adviser sees in each individual return factor.

Principal Investments

According to the Registration Statement, under normal market conditions, the Fund will invest principally (*i.e.,* at least 50% of the Fund's assets) in the securities and financial instruments described below, which may be represented by derivatives relating to such securities and financial instruments, as discussed below.

The Fund may purchase and sell U.S. and foreign exchange-traded commodity futures, equity futures, options on equity futures, bond futures, index futures, currency futures, and options on currency futures.

The Fund may invest in over-the-counter (''OTC'') total return swaps on equities, fixed income, commodities, and foreign currencies; currency swaps; interest rate swaps; credit default swaps (''CDS''); CDS index swaps (''CDX'') and loan credit default index swaps (''LCDX'').

The Fund may invest in forward and spot currency transactions. Such investments consist of non-deliverable forwards (''NDFs''), foreign forward currency contracts,[11] spot currency transactions, caps and floors.

The Fund may invest in cash and cash equivalents which are investments in money market funds (including funds for which the Adviser and/or its affiliates may serve as investment adviser or administrator), bank obligations,[12] and commercial paper.[13]

The Fund may invest in U.S. Government obligations, which may include direct obligations of the U.S.

[8] According to the Registration Statement, the Fund will use the following asset classes in implementing this strategy: Fixed Income—the Fund will seek to benefit from differences in the yield of interest rates, caused by uncertainty in interest rates. The Fund will invest in instruments with higher interest rate yields and short those with lower yields; Currency—the Fund will seek to benefit from differences in the relative yields of various currencies. The Fund will invest in higher yielding currencies and short those with lower yields. Commodities—the Fund will seek to benefit from differences in the price of commodities futures contracts trading below the expected market price at contract maturity and those trading above the expected market price at contract maturity.

[9] According to the Registration Statement, the Fund will implement the momentum return factor in the following ways: Looking at the relative value of prices of commodities and developed market currencies over time. The Fund intends to invest in futures or forward contracts to hold the best opportunities long while also shorting the worst opportunities within these asset classes. Looking across developed market fixed income, developed market equity indices and international (including emerging market) commodities, the Fund will seek to utilize futures contracts to exploit price momentum trends across the asset classes. At any particular time, the Fund may hold only long or only short futures in a particular asset class as part of this strategy.

[10] The Fund's investments would be subject to any applicable percentage limitations in Commentary .01 to NYSE Arca Rule 8.600–E.

[11] A foreign currency forward contract is a negotiated agreement between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate. The rate can be higher or lower than the spot rate between the currencies that are the subject of the contract.

[12] Bank obligations include the following: Bankers' acceptances, certificates of deposit and time deposits. Bankers' acceptances are bills of exchange or time drafts drawn on and accepted by a commercial bank. Maturities are generally six months or less. Certificates of deposit are negotiable certificates issued by a bank for a specified period of time and earning a specified return. Time deposits are non-negotiable receipts issued by a bank in exchange for the deposit of funds.

[13] Commercial paper consists of secured and unsecured short-term promissory notes issued by corporations and other entities. Maturities generally vary from a few days to nine months.

Treasury, including Treasury bills, notes and bonds, all of which are backed as to principal and interest payments by the full faith and credit of the United States, and separately traded principal and interest component parts of such obligations that are transferable through the Federal book-entry system known as Separate Trading of Registered Interest and Principal of Securities (''STRIPS'') and Coupons Under Book Entry Safekeeping (''CUBES'').

The Fund may invest in U.S. and foreign corporate debt.

Other Investments

While the Fund, under normal market conditions, will invest at least fifty percent (50%) of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in U.S. and foreign exchange-traded call and put options on equities, equity indexes and equity futures.

The Fund will gain exposure to commodity markets by investing directly in commodity related instruments or indirectly by investing up to 20% of its total assets in the Managed Futures Fund CS Ltd., a wholly owned subsidiary of the Fund organized under the laws of the Cayman Islands (the Subsidiary). The Subsidiary is also advised by the Adviser. The Subsidiary will only invest in commodity or cash management related investments described above in the Principal Investments section. However, the Subsidiary (unlike the Fund) may invest without limitation in commodity related investments, including derivative instruments linked to the value of a particular commodity, commodity index or commodity futures contract described above. The Subsidiary will otherwise be subject to the same fundamental, non-fundamental and certain other investment restrictions as the Fund.

The Fund may invest in U.S. exchange-listed preferred stock.

The Fund may invest in exchange-listed-and-traded real estate investment trusts (''REITs''). Exchange-listed REITs will be traded on U.S. national securities exchanges.

The Fund may invest in repurchase agreements and reverse repurchase agreements.

The Fund may invest in sovereign obligations, which are investments in debt obligations issued or guaranteed by a foreign sovereign government or its agencies, authorities or political subdivisions. The Fund may also invest in obligations of supranational entities including securities designated or supported by governmental entities to promote economic reconstruction or development of international banking institutions and related government agencies.

In addition to money market funds referenced above, the Fund may invest in shares of non-exchange-traded investment company securities including investment company securities for which the Adviser and/or its affiliates may serve as investment adviser or administrator, to the extent permitted by Section 12(d)(1)[14] of the 1940 Act and the rules thereunder and/or any applicable exemption or exemptive order under the 1940 Act with respect to such investments.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's (and the Subsidiary's) investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[15]

The Fund's and the Subsidiary's Use of Derivatives

The Fund proposes to seek certain exposures through transactions in the specific derivative instruments described above. The derivatives usage may occur in the Fund or the Subsidiary (provided that the Subsidiary will invest only in commodity or cash management related investments, as described above). The derivatives to be used are futures, swaps, forwards, and call and put options. Derivatives, which are instruments that have a value based on another instrument, exchange rate or index, may also be used as substitutes for securities in which the Fund can invest. The Fund may use these derivative instruments to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments and/or for risk management.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[16] Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Creation and Redemption of Shares

The consideration for a purchase of Creation Units will generally be cash, but may consist of an in-kind deposit of a designated portfolio of equity securities and other investments (the ''Deposit Instruments'') and an amount of cash computed as described below (the ''Cash Amount'') under some circumstances. The Cash Amount together with the Deposit Instruments, as applicable, are referred to as the ''Portfolio Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The size of a Creation Units is 50,000 Shares and is subject to change.

In the event the Fund requires Deposit Instruments and a Cash Amount in consideration for purchasing a Creation Unit, the function of the Cash Amount is to compensate for any differences between the net asset value (''NAV'') per Creation Unit and the Deposit Amount (as defined below). The Cash Amount would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which is an amount equal to the aggregate market value of the Deposit Instruments. If the Cash

[14] 15 U.S.C. 80a–12(d)(1).

[15] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[16] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

Amount is a positive number (the NAV per Creation Unit exceeds the Deposit Amount), the Authorized Participant will deliver the Cash Amount. If the Cash Amount is a negative number (the NAV per Creation Unit is less than the Deposit Amount), the Authorized Participant will receive the Cash Amount. The Administrator, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time (''E.T.'')), the list of the names and the required number of shares of each Deposit Instrument to be included in the current Portfolio Deposit (based on information at the end of the previous business day), as well as information regarding the Cash Amount for the Fund. Such Portfolio Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of the Deposit Instruments and Cash Amount required for the Portfolio Deposit for the Fund changes as rebalancing adjustments and corporate action events are reflected from time to time by the Adviser with a view to the investment objective of the Fund. In addition, the Trust reserves the right to accept a basket of securities or cash that differs from Deposit Instruments or to permit the substitution of an amount of cash (*i.e.,* a ''cash in lieu'' amount) to be added to the Cash Amount to replace any Deposit Instrument which may, among other reasons, not be available in sufficient quantity for delivery, not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention or for other reasons as described in the Registration Statement, or which may not be eligible for trading by a Participating Party (defined below). In light of the foregoing, in order to seek to replicate the in-kind creation order process, the Trust expects to purchase the Deposit Instruments represented by the cash in lieu amount in the secondary market.

Procedures for Creation of Creation Units

To be eligible to place orders with the Distributor to create Creation Units of the Fund, an entity or person either must be (1) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (2) a Depositary Trust Company (''DTC'') Participant, which, in either case, must have executed an agreement with the Distributor (as it may be amended from time to time in accordance with its terms) (''Participant Agreement''). A Participating Party and DTC Participant are collectively referred to as an ''Authorized Participant.'' All orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the Exchange (''Closing Time'') (ordinarily 4:00 p.m. E.T.), in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the Fund as determined on such date.

Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor, only on a business day and only through a Participating Party or DTC Participant who has executed a Participant Agreement. The Trust will not redeem Shares in amounts less than Creation Units. All orders to redeem Creation Units must be received by the Distributor no later than the Exchange Closing Time (ordinarily 4:00 p.m. E.T.).

Although the Fund will generally pay redemption proceeds in cash, there may be instances when it will make redemptions in-kind. In these instances, the Administrator, through NSCC, makes available immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) on each day that the Exchange is open for business, the identity of the Fund's assets and/or an amount of cash that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. With respect to redemptions in-kind, the redemption proceeds for a Creation Unit generally consist of Redemption Instruments (which are securities received on redemption) as announced by the Administrator on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Redemption Instruments, less the redemption transaction fee and variable fees described below.

Should the Redemption Instruments have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. The Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Redemption Instruments if, among other reasons, not permitted to be re-registered in the name of the customer as a result of an in-kind redemption order pursuant to local law or market convention or which may not be eligible for trading by a Participating Party.[17]

Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each business day, before commencement of trading in Fund Shares on NYSE Arca, the Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, one or more major market data vendors will disseminate every 15 seconds during the Exchange's Core Trading Session, through the facilities of the Consolidated Tape Association (''CTA'') or other widely disseminated means, an updated Portfolio Indicative Value (''PIV'') for the Fund as calculated by a third party market data provider.

A third party market data provider will calculate the PIV for the Fund. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- NDFs and foreign forward currency contracts may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps and currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- CDS, CDX and LCDX may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to

[17] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

be appropriate by the third party market data provider.

- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the applicable Disclosed Portfolio includes information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E (c)(2) to the extent applicable. The Fund's Web site information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of creation units in-kind.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(e) of Rule 8.600–E.[18] Specifically, the aggregate gross notional value of the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated based on the aggregate gross notional value of such OTC derivatives.

The Adviser represents that it intends to engage in strategies that utilize foreign currency forward transactions and swaps (which may be traded OTC), as described above, based on its investment strategies. Depending on market conditions, the exposure due to these strategies may exceed 20% of the Fund's assets. The Adviser represents further that the foreign exchange forward market is OTC and swaps may be traded OTC, and, as such, it is not possible to implement these strategies efficiently using listed derivatives. If the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund would have to exclude or underweight these strategies and would be less diversified, concentrating risk in the other strategies it will utilize.

The Adviser represents that the Fund will follow an investment strategy utilized within the JP Morgan Diversified Alternative ETF, shares of which have previously been approved by the Commission for Exchange listing and trading.[19] As noted above, the Fund may use the derivative instruments described above to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments and/or for risk management.

The Exchange notes that, other than Commentary.01(e) to Rule 8.600–E, the Fund will meet all other requirements of Rule 8.600–E.

Availability of Information

The Fund's Web site (*www.jpmorganfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[20] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on the Fund's Web site the Disclosed Portfolio for the Fund as defined in NYSE Arca Rule 8.600–E(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[21]

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*.

Quotation and last sale information for the Shares and for portfolio holdings of the Fund that are U.S. exchange-listed, including U.S. and foreign exchange-traded options, preferred stocks, and REITs will be available via the CTA high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as U.S. and foreign exchange-traded futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Price information for preferred stocks will also be available from one or more major market data vendors or from broker-dealers.

[18] Commentary .01(e) to NYSE Arca Rule 8.600–E provides that a portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

[19] *See* Securities Exchange Act Release No. 77904 (May 25, 2016), 81 FR 35101 (June 1, 2016) (SR–NYSEArca–2016–17) (order approving listing and trading of shares of the JPMorgan Diversified Alternative ETF under NYSE Arca Equities Rule 8.600).

[20] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[21] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Quotation information for cash equivalents, swaps, obligations of supranational agencies, money market funds, non-exchange-listed investment company securities (other than money market funds), U.S. Government obligations, U.S. Government agency obligations, sovereign obligations, repurchase agreements, reverse repurchase agreements, and U.S. and foreign corporate debt may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Forwards and spot currency price information will be available from major market data vendors.

In addition, the PIV, as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[22] The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Trading Halts

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 the Fund.[23] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. 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 the Fund inadvisable.

Trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [24] under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[25] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, exchange-listed equity securities, certain futures, and certain exchange-traded options with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[26] 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'').

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the

[22] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

[23] *See* NYSE Arca Rule 7.12–E.

[24] 17 CFR 240 10A–3.

[25] 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.

[26] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [27] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, exchange-listed equity securities, certain futures, and certain exchange-traded options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. 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 TRACE.

The PIV, as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser, consistent with Commission guidance.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings (including those of the Subsidiary) will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. On a daily basis, the Fund will disclose the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E (c)(2) to the extent applicable. The Fund's Web site information will be publicly available at no charge.

The Fund's portfolio would meet all requirements of Rule 8.600–E except for those set forth in Commentary .01(e) of Rule 8.600.[28] Specifically, the aggregate gross notional value of the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated based on the aggregate gross notional value of such OTC derivatives.

The Exchange believes that it is appropriate and in the public interest to allow the Fund to exceed the 20% limit in Commentary .01(e) to Rule 8.600 of portfolio assets that may be invested in OTC derivatives. Because the Fund, in furtherance of its investment objective, may seek to gain market exposure using OTC traded foreign currency forwards and swaps, the 20% limit in Commentary .01(e) to Rule 8.600 could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. As noted above, the Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk. Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure. In addition, OTC derivatives may be tailored more specifically to the assets held by the Fund than available listed derivatives. The Adviser also represents that the Fund will follow an investment strategy utilized within the JP Morgan Diversified Alternatives ETF, shares of which have previously been approved by the Commission for Exchange listing and trading pursuant to Section 19(b)(2)

[27] 15 U.S.C. 78f(b)(5).

[28] *See* note 18, *supra*.

of the Act.[29] The Exchange further believes that the Fund would be placed at a competitive disadvantage to the JP Morgan Diversified Alternatives ETF, if the Fund's portfolio could not exceed the 20% limit in Commentary .01(e) to Rule 8.600 of portfolio assets that may be invested in OTC derivatives, as described above.

The Exchange notes that, other than Commentary .01(e) to Rule 8.600–E, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares of the 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, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio for the Fund, and quotation and last sale information for the Shares of the 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 that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that holds fixed income securities, equity securities, commodities, currencies and derivatives and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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–2017–86 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–2017–86. 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–2017–86, and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21403 Filed 10–4–17; 8:45 am]

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[29] *See* Securities Exchange Act Release No. 77904 (May 25, 2016), 81 FR 35101 (June 1, 2016) (SR–NYSEArca–2016–17) (order approving listing and trading of shares of the JPMorgan Diversified Alternative ETF under NYSE Arca Equities Rule 8.600).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81783; File No. SR–NYSEAMER–2017–05]

Self-Regulatory Organizations; NYSE American LLC; Order Approving Proposed Rule Change To Amend the Complimentary Products and Services Available to Certain Eligible New Listings Pursuant to Section 146 of the NYSE American Company Guide

September 29, 2017.

I. Introduction

On August 11, 2017, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 146 of the NYSE American Company Guide (the ''Company Guide'') to provide that companies initially listed on or after October 1, 2017 will not be eligible to receive corporate governance tools under the Exchange's current services offering. The proposed rule change was published for comment in the **Federal Register** on August 29, 2017.[3] No comment letters were received in response to the Notice. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange has proposed to amend Section 146 of the Company Guide to provide that companies initially listed on or after October 1, 2017 will not be eligible to receive the corporate governance tools described under the Exchange's current services offering.

As set forth in Section 146 of the Company Guide, the Exchange currently provides Eligible New Listings [4] with complimentary Web-hosting products and services (with a commercial value of approximately $16,000 annually), web-casting services (with a commercial value of approximately $6,500 annually), whistleblower hotline services (with a commercial value of approximately $4,000 annually), news distribution products and services (with a commercial value of approximately $20,000 annually), and corporate governance tools (with a commercial value of approximately $15,000 annually) for a period of 24 calendar months.[5] According to the Exchange, companies that qualify as Eligible New Listings have generally not been interested in utilizing the corporate governance tools available as part of the Exchange's services offering.[6] The Exchange has therefore proposed to discontinue the corporate governance tools portion of its service offering for companies that list on or after October 1, 2017.[7] The Exchange proposal states, however, that any Eligible New Listing that lists prior to October 1, 2017 will continue to be able to access the corporate governance tools for a period of 24 months to the extent their eligibility permits under current Section 146 of the Company Guide.[8]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[9] Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4) [10] and 6(b)(5) of the Act [11] in particular, in that the proposed rule is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act [12] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to modify its existing complimentary service offerings to no longer offer corporate governance tools to Eligible New Listings that list on or after October 1, 2017. The Exchange states that Eligible New Listings have generally not been interested in utilizing the corporate governance tools offered by the Exchange.[13] The Commission believes it is reasonable and consistent with the Act for the Exchange to discontinue such services if it believes they are not being utilized. The Commission notes that the effect of the proposal is to reduce the commercial value of offerings to Eligible New Listings by $15,000 annually, which is the value of the corporate governance tools as currently set forth in Section 146 of the Company Guide. The value of the remaining offerings to Eligible New Listings will continue to remain transparent under Section 146 of the Company Guide. The Commission believes that by accurately describing in the Company Guide the current products and services available to listed companies and the current values of those products and services, the Exchange is maintaining transparency with respect to its rules and the fees applicable to such companies. This helps to ensure that individual listed companies are not given specially negotiated packages of products and services to list or remain listed that would raise unfair discrimination issues under the Act.[14]

Under the proposal, Eligible New Listings that list prior to October 1, 2017 will remain eligible to receive all the complimentary products and services currently provided by the Exchange, including the corporate governance tools. The Commission notes that Section 6(b)(5) of the Act does not require that all issuers be treated the same; rather, the Act requires that the rules of an exchange not unfairly discriminate between issuers. The Exchange states that it believes it is not unfairly discriminatory to continue to offer corporate governance tools to companies listed prior to October 1, 2017, as that benefit was part of the services offering that was available at the time of such companies' initial listing and may have had some influence over their listing decisions.[15]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81470 (August 23, 2017), 82 FR 41075 (''Notice'').

[4] For the purposes of Section 146, the term ''Eligible New Listing'' means: (i) Any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 101 or 110 of the Company Guide for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering; (ii) any U.S. or non- U.S. company that transfers its listing of common stock or equity securities, respectively, to the Exchange from another national securities exchange; and (iii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).

[5] *See* Section 146 of the Company Guide.

[6] *See* Notice, *supra* note 3, at 41076.

[7] *See id.*

[8] *See id.*

[9] 15 U.S.C. 78f. 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).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(8).

[13] *See* Notice, *supra* note 3, at 41076.

[14] *See* Securities Exchange Act Release No. 77401 (March 17, 2016), 81 FR 15585 (March 23, 2016) (SR–NYSEMKT–2016–12) (order approving the initial complimentary products and services provided by the Exchange to Eligible New Listings).

[15] *See* Notice, *supra* note 3, at 41076.

The Commission believes that the Exchange has provided a sufficient basis for its different treatment of Eligible New Listings that list prior to October 1, 2017 and that this portion of the Exchange's proposal meets the requirements of the Act. In making this determination, the Commission notes that the provision of services under Section 146 of the Company Guide is for a limited duration and that the Exchange has provided a reasonable basis for deciding to treat Eligible New Listings that list prior to October 1, 2017 differently from other listed companies going forward. The Commission notes that at the time such companies listed, they had an expectation, if they intended to utilize the corporate governance tools, to be able to do so for the entire 24 month period as set forth in the current rule. To allow such companies listed prior to October 1, 2017 to finish utilizing corporate governance tools for any remainder of their 24 month period appears to be reasonable, equitable, and not unfairly discriminatory. In addition, the Commission notes that the October 1, 2017 date, to curtail the offering of corporate governance tools for Eligible New Listings that list on or after that date, was transparent and published for comment in advance of approval by the Commission in the order discussed herein. As noted above, the Commission received no comments on the proposal. Finally, the Commission has also previously approved proposals providing different services to newly-listed issuers, including those transferring their listing from another exchange, and has found this consistent with Sections 6(b)(4) and 6(b)(5) of the Act.[16]

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, that the products and services provided under Section 146 of the Company Guide are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, the proposed rule change does not unfairly discriminate among issuers consistent with Section 6(b)(5) of the Act, and the proposed rule change is appropriate and consistent with Section 6(b)(8) of the Act in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[17]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEAMER–2017–05), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21415 Filed 10–4–17; 8:45 am]

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[16] *See* Securities Exchange Act Release Nos. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (order approving SR–NYSE–2015–36); 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (order approving SR–NASDAQ–2014–058); 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (order approving SR–NASDAQ–2011–122).

[17] 15 U.S.C. 78f(b)(4), (5), and (8).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81772; File No. SR–ISE–2017–84]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 716(c) on the Block Order Mechanism

September 29, 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 September 18, 2017, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 716(c) to more accurately describe the allocation methodology used in the Block Order Mechanism, add language regarding how the block execution price is determined, and describe the content of the broadcast message disseminated to members upon the entry of an order into the mechanism.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Block Order Mechanism is a process by which a member can obtain liquidity for the execution of block-sized orders,[3] defined as orders for fifty contracts or more.[4] When an order is entered in the Block Order Mechanism, that order is exposed to members who are given an opportunity to respond with the prices and sizes at which they would be willing to trade with the block-sized order.[5] The exposure period is designated by the Exchange via circular, but must be no less than 100 milliseconds and no more than 1 second.[6] At the conclusion of the exposure period, either an execution will occur at a single block execution price,[7] or the order will be cancelled.[8] The purpose of the proposed rule change is to amend Rule 716(c) to more accurately describe the allocation methodology used in the Block Order Mechanism, add language regarding how the block execution price is determined, and describe the content of the broadcast message disseminated to members upon the entry of an order into the mechanism. The Exchange believes that these changes will increase transparency around the operation of the Block Order Mechanism to the benefit of members and market participants.

Currently, Rule 716(c)(2)(ii) provides that Responses, quotes, and Professional

[3] *See* Rule 716(c).

[4] *See* Rule 716(a).

[5] A ''Response'' is an electronic message that is sent by members in response to a broadcast message. *See* Rule 716(b).

[6] *See* Supplementary Material .04 to Rule 716.

[7] Responses and orders and quotes on the order book at the time the block order is executed that are priced better than the block execution price are executed at the block execution price. *See* Rule 716(c)(2)(i).

[8] *See* Rule 716(c)(2).

Orders [9] at the block execution price will participate in the execution of the block-size order according to Rule 713(e)—*i.e.,* the Exchange's regular allocation rule. As implemented today, however, interest that is executed in the Block Order Mechanism follows the customer priority pro-rata allocation methodology designed for the Exchange's auction mechanisms, including, for example, the Facilitation Mechanism,[10] Solicited Order Mechanism,[11] and Price Improvement Mechanism,[12] with the exception that those two-sided auction mechanisms also allocate contracts against the contra order. This auction allocation methodology is similar to the Exchange's regular allocation methodology but does not provide enhanced allocations to the Primary Market Maker (''PMM'') pursuant to Rule 713(e) and Supplementary Material .01(b) to Rule 713.[13] The Exchange therefore proposes to amend Rule 716(c)(2)(ii) to provide that, at the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first in time priority, and then quotes, Professional Orders, and Professional Responses will participate in the execution of the block-size order based upon the percentage of the total number of contracts available at the block execution price that is represented by the size of the quote, Professional Order, or Professional Response. In addition, the Exchange proposes to specify in Rule 716(c)(2)(i) that interest that is priced better than the block execution price is executed in full. In particular, the Exchange proposes to amend this rule to state that bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price. Although Rule 716(c)(2)(ii) described above explains how allocations are handled at the block execution price, the Exchange believes that the additional clarity that interest that is priced better than the block execution price is executed in full would be helpful to members. With these two proposed changes, Rule 716(c) will more accurately describe the allocation methodology used in the Block Order Mechanism.

Furthermore, the Exchange proposes to add language to Rule 716(c)(2)(i) that explains the price at which orders entered into the Block Order Mechanism are executed. In particular, the Exchange proposes to state that Responses, orders, and quotes will be executed at a single block execution price that is the price for the block-size order at which the maximum number of contracts can be executed consistent with the member's instruction. For example, if a member enters a block-sized order to buy 100 contracts at $1.00 into the Block Order Mechanism, and members enter Response A to sell 50 contracts at $0.90 and Response B to sell 40 contracts at $0.95, the block execution price would be $0.95 as this is the price at which the maximum number of contracts could be executed. The block-sized order and both Responses would then be executed at this single block execution price. Responses A and B would be executed in full since there is sufficient size to execute both Responses against the block-size order. In addition, if two other members also enter Responses C (Priority Customer) and D (non-Priority Customer) to sell at $0.98 for 10 contracts each, the block execution price would be $0.98 as additional contracts could be executed at that price. In that instance, Responses A and B, which are priced better than the block execution price, would be executed in full, while Responses B and C, which are priced at the block execution price, would participate in accordance with the allocation methodology described in this proposed rule change—*i.e.,* the remaining 10 contracts would go to Response C, which is a Priority Customer Response. The Block Order Mechanism is designed to provide an opportunity for members to receive liquidity for their block-sized orders and therefore trades at a price that allows the maximum number of contracts of such order to be executed against Responses entered to trade against the block-size order and interest on the Exchange's order book. The Exchange believes that describing how the block execution price is determined in Rule 716(c)(2)(i) will increase transparency around pricing of executions in the Block Order Mechanism.

Finally, the Exchange proposes to add language to Rule 716(c)(1) to describe the content of the broadcast message sent to members upon the entry of an order into the Block Order Mechanism. In particular, the Exchange proposes to specify that this broadcast message includes the series, and may include price, size and/or side, as specified by the member entering the order. Similar language is included in the Block Order Mechanism Rule on the Exchange's affiliates, Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX''), which operate in the same way as ISE's Block Order Mechanism.[14] The Exchange therefore believes that this change will increase transparency around the content of the broadcast message and promote consistency across the rulebooks of its affiliated exchanges that offer identical functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[16] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to the allocation language in Rule 716(c)(2)(i)–(ii) are consistent with the protection of investors and the public interest as the proposed allocation language more accurately reflects the Exchange's process for allocating contracts executed in the Block Order Mechanism. Although the Exchange's allocation rule for the Block Order Mechanism currently references the allocation process for regular trading, the allocation methodology does not include certain parts of the regular allocation procedure. In particular, the Exchange does not grant any special allocation to the PMM for interest executed in the Block Order Mechanism. The Exchange believes that it is appropriate to not provide an enhanced allocation entitlement to the PMM for interest executed in the Block Order Mechanism, as the Block Order Mechanism provides an auction process that does not rely on market maker quoting and other obligations to source liquidity. Furthermore, the Exchange

[9] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* Rule 100(a)(37C).

[10] *See* Rule 716(d).

[11] *See* Rule 716(e).

[12] *See* Rule 723.

[13] Supplementary Material .01(b) to Rule 713 provides that, if the PMM is quoting at the best price, it has participation rights equal to the greater of the proportion of the total size at the best price represented by the size of its quote, or a percentage allocation entitlement based on the number of other Professional Orders and market maker quotations at the best price.

[14] *See* GEMX and MRX Rule 716(c)(1).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

believes that it is helpful to explain in this rule that interest that is priced better than the block execution price would be executed in full. The allocation process used for the Block Order Mechanism is similar to how the Exchange allocates contracts in other auction mechanisms, including, for example, the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism, with the exception that those two-sided auction mechanisms also allocate contracts against the contra order.[17]

The Exchange also believes that the proposed changes to describe how the block execution price is determined is consistent with the protection of investors and the public interest as this change will increase transparency around the price at which interest is executed in the Block Order Mechanism. As explained above, the Block Order Mechanism is designed to provide an opportunity for members to receive liquidity for their block-sized orders and therefore trades at a price that allows the maximum number of contracts of such order to be executed against Responses entered to trade against the block-size order and interest on the Exchange's order book. The Exchange believes that describing how the block execution price is determined in Rule 716(c)(2)(i) will increase transparency around pricing of executions in the Block Order Mechanism.

Finally, the Exchange believes that the proposed change to Rule 716(c)(1) is consistent with the protection of investors and the public interest as it will provide transparency to members about the content of the broadcast message sent to members upon the entry of an order into the Block Order Mechanism. Currently, the broadcast message includes the series, and may include price, size and/or side, as specified by the member entering the order. The Exchange is not proposing any changes to the content of the broadcast message but wants to make this clear in its rules, which, with this change, will be consistent with the rules of its affiliates, GEMX and MRX.[18]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[19] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to correct the Exchange's rules to more accurately reflect the handling of auctions in the Block Order Mechanism. No changes are proposed to the operation of the Exchange's trading system, and no members will be impacted by the proposed rule, which merely reflects current functionality offered to members that trade in the Block Order Mechanism. The proposed rule change is therefore not designed to impose any significant burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange notes that a waiver is consistent with the protection of investors and the public interest because it will allow the Exchange to correct its Block Order Mechanism rules to reflect the current functionality of the system without undue delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[24]

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–ISE–2017–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2017–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

[17] *See* supra notes 10–12 and accompanying text.

[18] *See* supra note 14 and accompanying text.

[19] 15 U.S.C. 78f(b)(8).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 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.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–ISE–2017–84 and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21407 Filed 10–4–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32845; File No. 812–14726]

Olden Lane Securities LLC and Olden Lane Trust; Notice of Application

September 29, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered unit investment trusts (''UITs'') to acquire shares of certain registered open-end investment companies, registered closed-end investment companies and registered UITs (collectively, the ''Underlying Funds'') that are within and outside the same group of investment companies as the acquiring UITs, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: Olden Lane Trust (the ''Trust''), a UIT that is registered under the Act, and Olden Lane Securities (''Olden Lane''), a Delaware limited liability company registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act'').

FILING DATES: The application was filed on December 9, 2016 and amended on April 10, 2017, July 25, 2017 and September 15, 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 October 24, 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: Olden Lane Securities LLC and Olden Lane Trust, 200 Forrestal Road, Suite 3B, Princeton, NJ 08540.

FOR FURTHER INFORMATION CONTACT: Andrea Ottomanelli Magovern, Acting Branch Chief, at (202) 551–6768 or Nadya Roytblat, Assistant Chief Counsel, 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.

Summary of the Application

1. Applicants request an order to permit (a) a Series [1] to acquire shares of Underlying Funds [2] in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment companies, their principal underwriters and any broker or dealer registered under the Exchange Act to sell shares of the Underlying Funds to the Series in excess of the limits in section 12(d)(1)(B) of the Act.[3] Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Series.[4] Applicants state that such transactions will be consistent with the policies of each Series and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same ''group of investment companies'' as the UIT through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

[25] 17 CFR 200.30–3(a)(12).

[1] Applicants request that the order apply to each existing and future series of the Trust and to any future registered UIT and series thereof sponsored by Olden Lane or an entity controlling, controlled by or under common control with Olden Lane (the ''Series'').

[2] Certain of the Underlying Funds may be registered as an open-end investment company or a UIT, but have received exemptive relief from the Commission to permit their shares to be listed and traded on a national securities exchange at negotiated prices and to operate as exchange-traded funds (''ETFs'').

[3] Applicants do not request relief for the Series to invest in reliance on the order in closed-end investment companies that are not listed and traded on a national securities exchange.

[4] A Series generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from section 17(a) to permit a Series to purchase or redeem shares from the ETF. A Series will purchase and sell shares of an Underlying Fund that is a closed-end fund through secondary market transactions at market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to transactions in shares of closed-end funds.

Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21398 Filed 10–4–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81767; File No. SR–NYSEARCA–2017–114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

September 29, 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 September 26, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective October 1, 2017. 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 purpose of this filing is to amend the Fee Schedule effective October 1, 2017. Specifically, the Exchange proposes to place a cap on an incentive for Floor Brokers to execute Qualified Contingent Cross (''QCC'') transactions.

Currently, Floor Brokers earn a rebate for executed QCC orders of $0.035 per contract side.[4] QCC executions in which a Customer or Professional Customer (collectively, ''Customer'') is on both sides of the QCC trade are not eligible for the Floor Broker rebate.[5] The Exchange does not currently impose any monthly cap on the maximum to be paid under the QCC rebate program.

The Exchange proposes to limit the maximum Floor Broker rebate to $375,000 per month per Floor Broker firm.[6] Although the proposal would limit the potential monthly rebate, the Exchange believes that OTP Holders acting as Floor Brokers would still be incented to achieve the highest rebate possible. The Exchange notes that other options exchanges have similar caps on rebates offers for QCC transactions.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Specifically, the Exchange does not currently impose any monthly cap on the maximum to be paid to Floor Broker firms under the QCC rebate program. The Exchange believes the proposed cap is reasonable, equitable and not unfairly discriminatory because all OTP Holders would be uniformly capped at a potential rebate of $370,000 per month per Floor Broker firm. In addition, the proposal is reasonable, equitable and not unfairly discriminatory because it is consistent with similar caps on rebates pad [sic] for QCC transactions on other exchanges.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] 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 cap would not impose an unfair burden on competition because all OTP Holders would be uniformly capped at $375,000 per month per Floor Broker firm and because the proposal is consistent with similar caps on rebates pad [sic] for QCC transactions on other exchanges.[12]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, QUALIFIED CONTINGENT CROSS TRANSACTION FEES, *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[5] *See id.,* Endnote 14.

[6] *See* proposed Fee Schedule, Endnote 13 (providing that ''[t]he maximum Floor Broker Rebate paid shall not exceed $375,000 per month per Floor Broker firm'').

[7] *See* NYSE American Options Fee Schedule, Section I.F., QCC Fees & Credits, n. 1, *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (providing that ''[t]he maximum Floor Broker credit paid shall not exceed $375,000 per month per Floor Broker firm''); Chicago Board Options Exchange (''CBOE'') fee schedule, QCC Rate Table, p. 5, *available here, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (providing that QCC credits ''will be capped at $350,000 per month'', per CBOE trading permit holder).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See supra* note 7.

[11] 15 U.S.C. 78f(b)(8).

[12] *See supra* note 7.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–114 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–2017–114. 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–2017–114, and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21404 Filed 10–4–17; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81773; File No. SR–NASDAQ–2017–101

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date for Certain Changes to the Rule 5700 Series and Rule 5810

September 29, 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 September 27, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the date on which certain changes concerning the continued listing requirements for exchange-traded products (''ETPs'') in the Nasdaq Rule 5700 Series, as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department), are implemented.

The Exchange proposes to delay the implementation date of these changes until January 1, 2018. Given the scope of the proposed rule changes, the Exchange believes that this will ensure that ETP issuers have adequate time to finish developing and put into operation the new processes and systems necessitated by them.

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

On September 30, 2016, the Exchange filed a proposed rule change, as subsequently amended by Amendments No. 1 and 2 thereto, and as supplemented by two clean-up filings [3] (as amended and supplemented, collectively, the ''Proposed Rule Change''), to adopt certain changes to the Nasdaq Rule 5700 Series, as well as a related amendment to Nasdaq Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79081 (Oct. 11, 2016), 81 FR 71548 (Oct. 17, 2016) (SR–NASDAQ–2016–135); *see also* Securities Exchange Act Release No. 80708 (May 17, 2017), 82 FR 23690 (May 23, 2017) (SR–NASDAQ–2017–040); *see also* Securities Exchange Act Release No. 80810 (May 30, 2017), 82 FR 26205 (June 6, 2017) (SR–NASDAQ–2017–052).

5810 (Notification of Deficiency by the Listing Qualifications Department), to add additional continued listing standards for ETPs, as well as clarify the procedures that the Exchange will undertake when an ETP is noncompliant with applicable rules.

On May 3, 2017, the Exchange filed to extend the implementation date from August 1, 2017 until October 1, 2017.[4] The Exchange now proposes to extend the implementation date of the amendments specified in the Proposed Rule Change to January 1, 2018.

Since the Proposed Rule Change was approved, the Exchange has engaged in extensive conversations with issuers of listed ETPs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application.[5] As a result of these conversations, ETP issuers have expressed concern about their ability to finish and to have in place systems and procedures to ensure compliance by the current October 1, 2017 implementation date. In particular, listed ETP issuers, and industry advocacy groups on their behalf, have explained that issuers will require time to design and test new compliance systems, as well as engage in discussions with third-party providers to source and track new data elements required for rule compliance.[6] The Exchange's understanding is that some issuers have started to develop procedures, build systems and are testing new compliance systems. Also, that some issuers have begun discussions with third-party providers, including efforts to renegotiate existing license agreements. As of the date of this filing, issuers have said that they will not be ready by the current October 1, 2017 implementation date.

In connection with the implementation of the new continued listing standards, Nasdaq has prepared a set of Frequently Asked Questions (''FAQs'') that address questions raised by issuers.[7] Nasdaq is continuing to discuss the implementation of the continued listing standards with issuers and will continue to revise the FAQs where further interpretive guidance is necessary. Also, there are areas of interpretive guidance still being formulated. For example, interpretive guidance as to how issuers of exchange-traded funds (''ETFs'') should categorize securities into ''equity'' and ''fixed income'' buckets, particularly for assets like hybrid capital, preferred securities or convertible debt. Additionally, Nasdaq will maintain and continue communications with issuers during the implementation date extension period in order to understand the issuers' progress.

The Exchange believes it is appropriate to extend the implementation date of the Proposed Rule Change to January 1, 2018 to provide listed ETP issuers with the time needed to finish developing and testing their compliance procedures. In support of its proposal, the Exchange notes that the Proposed Rule Change imposes significant new compliance requirements on issuers that they have not been subject to previously. To meet these new requirements, issuers must develop additional internal systems, as well as coordinate with third-party service providers, such as index providers, to renegotiate existing license agreements and to develop procedures by which they can obtain essential data.[8]

Listed issuers have informed the Exchange that they are unable to complete this extensive project by the pending October 1, 2017 implementation date. The Exchange believes that it is critical for listed ETP issuers to have the appropriate procedures and systems in place to monitor and evidence ETP compliance with the new continued listing rules before such rules are implemented because this will help issuers preemptively identify issues and thereby avoid experiencing any disruptions in the trading of their products. Therefore, the Exchange proposes to extend the implementation date for the Proposed Rule Change until January 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors because it will enable listed issuers to have the systems and procedures needed to monitor and evidence compliance with the Proposed Rule Change prior to such rule being implemented because this will help issuers preemptively identify issues and thereby avoid experiencing any disruptions in the trading of their products. Issuers are still conducting systems testing and further developing procedures. In addition, there are areas of interpretive guidance still being formulated as discussed previously in this filing.

Additionally, Nasdaq will maintain and continue communications with issuers during the implementation date extension period in order to understand the issuers' progress. Providing listed issuers with additional time to ensure that they have adequate compliance systems in place furthers the protection of investors and the public interest because it will enhance investor confidence that listed issuers are complying with Exchange rules and because it will reassure investors that issuers can properly monitor and preemptively identify issues and thereby avoid experiencing any disruptions in the trading of the issuers' products.

For these reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed rule change will facilitate listed issuer ability to monitor and evidence compliance with approved continued listing rules by providing

[4] *See* Securities Exchange Act Release No. 80708 (May 17, 2017), 82 FR 23690 (May 23, 2017) (SR–NASDAQ–2017–040).

[5] In addition to submitting the index components to the Exchange on a quarterly basis, the Exchange believes that it would be appropriate for issuers to review the index components for compliance with the continued listing requirements in connection with index rebalances, reconstitutions, or other material changes to the index components.

[6] *See,* for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, available at *https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-155175.pdf.*

[7] *See https://listingcenter.nasdaq.com/Material_Search.aspx?mcd=LQ&cid=142&sub_cid=&years=2017,2016,2015,2017,2016,2015,2014,2013,2012,2011,2010,2009,2008,2007,2006,2005,2004,2003,2002&criteria=1&materials.*

[8] It is the Exchange's understanding that issuers are updating and testing internal systems to process and monitor the index data for compliance with the new continued listing standards.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

issuers with additional time to finish developing and testing their internal systems and procedures prior to the implementation date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a copy of a letter from the Investment Company Institute, on behalf of listed ETP issuers, to the SEC.[11] As described in Item 3 [sic], above, the Investment Company Institute detailed challenges that listed ETF issuers are facing in developing compliance systems to address the amendments contained in the Proposed Rule Change and have requested that the implementation date for such amendments be extended.

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) of the Act and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4 (f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay will allow the Exchange to immediately extend the implementation date of the Proposed Rule Change, and avoid the potential confusion and disruption that could result if the extension did not become operative until after October 1, 2017. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–101 and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21408 Filed 10–4–17; 8:45 am]

BILLING CODE 8011–01–P

[11] *See* Footnote 6, *supra.*

[12] 17 CFR 240.19b–4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81777; File No. SR–BatsBZX–2017–63]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date for Certain Changes to Exchange Rules 14.11 and 14.12

September 29, 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 September 28, 2017, Bats BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to extend the date on which certain changes to Exchange Rules 14.11 and 14.12 would be implemented.

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 18, 2016 the Exchange filed a proposed rule change, as subsequently amended by Amendments No. 1 and 2 thereto (as amended, the ''Proposed Rule Change''), to adopt certain changes to Exchange Rules 14.11 and 14.12 to add additional continued listing standards for exchange-traded products (''ETP'') as well as clarify the procedures that the Exchange will undertake when an ETP is noncompliant with applicable rules. Given the scope of the amendments specified in the Proposed Rule Change, the Exchange proposed that such amendments not be implemented until October 1, 2017. On March 7, 2017, the Commission granted approval of the Proposed Rule Change, including the October 1, 2017 implementation date. On September 20, 2017, the Exchange submitted an interpretive filing (the ''Interpretive Filing'') [5] and on September 21, 2017 published a document that answers a series of frequently asked questions (the ''FAQs'').[6] The Interpretive Filing and FAQs are intended to provide guidance as it relates to ETP issuers complying with the Proposed Rule Change upon implementation. The Exchange continues to engage with issuers about the Proposed Rule Change and will update the FAQs as needed based on those conversations. The Exchange now proposes to extend the implementation date of the amendments specified in the Proposed Rule Change to January 1, 2018.[7]

Since the Proposed Rule Change was approved, the Exchange has engaged in extensive conversations with issuers of listed ETPs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application, and, as noted above, the Exchange recently submitted the Interpretive Filing and distributed the FAQs. As part of these conversations, the Exchange has learned that many issuers have already engaged in building and testing the necessary compliance systems, but that they have been unable to finalize implementation without this additional guidance. As such, ETP issuers have expressed concern about their ability to have in place well-tested systems and procedures to ensure compliance by the current October 1, 2017 implementation date. ETP issuers, and industry advocacy groups on their behalf, have explained that issuers will require time to design and test new compliance systems as well as engage in discussions with third-party providers to source and track new data elements required for rule compliance.[8] An additional three months prior to implementation will allow ETP issuers to finish building, more thoroughly test, and enhance the systems and procedures that they've already developed in advance of the current October 1, 2017 implementation date. Further, the additional time prior to implementation will further facilitate the ongoing discussion, which will include progress updates, between the Exchange, ETP issuers, and index providers.

The Exchange believes it is appropriate to extend the implementation date of the Proposed Rule Change to January 1, 2018 to provide ETP issuers with the time needed to finish developing and test their compliance procedures. In support of its proposal, the Exchange notes that the Proposed Rule Change imposes significant new compliance requirements on issuers that they have not been subject to previously. To meet these new compliance requirements, issuers must develop internal systems as well as coordinate with third-party service providers, such as index providers, to develop procedures by which they can obtain essential data, which includes the form, timing, and means by which such data is conveyed. Listed issuers have informed the Exchange that they are unable to complete and sufficiently test this extensive project by the pending October 1, 2017 implementation date. The Exchange believes that it is critical for ETP issuers to have the appropriate procedures and systems in place to monitor and evidence ETP compliance with the new continued listing rules before such rules are implemented in order to ensure meaningful compliance upon initial implementation, which could help avoid trading disruption in the ETPs. Therefore, the Exchange proposes to extend the implementation date for the Proposed Rule Change until January 1, 2018.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [9] in general and Section 6(b)(5) of the Act [10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 amendment is consistent with the protection of investors because it will provide additional time for issuers to finish building, more thoroughly test, and enhance the systems and procedures prior to the initial implementation of the Proposed Rule Change which will help ensure compliance upon initial implementation which will further promote the policy goals underlying the Proposed Rule Change and would help avoid trading disruption in the ETPs. Since the Proposed Rule Change was approved, the Exchange has engaged in extensive

[5] *See* SR–BatsBZX–2017–61, available at: *http://cdn.batstrading.com/resources/regulation/rule_filings/approved/2017/SR-BatsBZX-2017-61.pdf.*

[6] The FAQs are available at: *http://cdn.batstrading.com/resources/listings/FAQs%20-%20New%20Cont%20List%20Standards%20FINAL.pdf.*

[7] *See* Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017) (SR–BatsBZX–2016–80).

[8] *See,* for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, *available at https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-155175.pdf.*

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

conversations with issuers of listed ETPs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application, and, as noted above, the Exchange recently submitted the Interpretive Filing and distributed the FAQs. As a result of these conversations and the recent distribution of interpretive guidance, ETP issuers have expressed concern about their ability to have in place well-tested systems and procedures to ensure compliance by the current October 1, 2017 implementation date. ETP issuers, and industry advocacy groups on their behalf, have explained that issuers will require time to design and test new compliance systems as well as engage in discussions with third-party providers to source and track new data elements required for rule compliance.[11] An additional three months prior to implementation will allow ETP issuers to more thoroughly test and enhance the systems and procedures that they've already developed in advance of the current October 1, 2017 implementation date. Further, the additional time prior to implementation will further facilitate the ongoing dialogue between the Exchange, ETP issuers, and index providers.

Providing listed issuers with additional time before the implementation of the Proposed Rule Change furthers the protection of investors and the public interest because it will enhance investor confidence that listed issuers are complying with Exchange rules by providing sufficient time to finish building, more thoroughly test, and enhance the systems and procedures prior to the initial implementation, which could help avoid trading disruption in the ETPs.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate ETP issuers' ability to monitor and evidence compliance with approved continued listing rules by providing issuers with additional time to finish developing and testing their internal systems and procedures prior to the implementation date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a copy of a letter from the Investment Company Institute, on behalf of ETP issuers, to the Securities [sic] Exchange Commission.[12] As described in Item 3 [sic], above, the Investment Company Institute detailed challenges that ETP issuers are facing in developing compliance systems to address the amendments contained in the Proposed Rule Change and have requested that the implementation date for such amendments be extended.

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) of the Act and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay will allow the Exchange to immediately extend the implementation date of the Proposed Rule Change, and avoid the potential confusion and disruption that could result if the extension did not become operative until after October 1, 2017. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2017–63 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–BatsBZX–2017–63. 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

[11] *See,* for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, *available at https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-155175.pdf.*

[12] *See* Footnote 5, *infra* [sic].

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BatsBZX–2017–63 and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21412 Filed 10–4–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81782; File No. SR–NYSENat–2017–04]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rules To Establish a Rule Numbering Framework in Connection With the Re-Launch of Trading on the Exchange

September 29, 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 September 28, 2017, NYSE National, Inc. (the ''Exchange'' or ''NYSE National'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt rules to establish a rule numbering framework in connection with the re-launch of trading on the Exchange. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE National, in connection with the re-launch of its trading operations, proposes to adopt rules to establish a rule numbering framework. The Exchange proposes to establish this framework in order to facilitate the amendment and re-publication of its new rule book in advance of the re-launch of trading operations on the Exchange.

On January 31, 2017, Intercontinental Exchange, Inc. (''ICE''), through its wholly-owned subsidiary NYSE Group, acquired all of the outstanding capital stock of the Exchange (the ''Acquisition'').[4]

Immediately following the closing of the Acquisition, effective February 1, 2017, NYSE National ceased trading operations.[5] NYSE National continues to be registered as a national securities exchange and has rules that are distinct from the rules of the three other registered national securities exchanges owned by NYSE Group, namely, NYSE, NYSE American LLC, and NYSE Arca, Inc. (''NYSE Arca'', and together, the ''NYSE Exchanges'').[6]

In connection with the Acquisition, NYSE Group announced its plans to migrate NYSE National to the NYSE Pillar platform, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the NYSE Exchanges.[7] The Exchange now proposes to re-launch trading using the NYSE Pillar platform.

To that end, in connection with the re-launch of trading operations following the migration to Pillar, the Exchange proposes to adopt the rule numbering framework of the rules governing the NYSE Arca equities market. The Exchange believes that if it and its affiliates are operating on the same trading platform, using the same rule numbering scheme across all markets using the NYSE Pillar platform will make it easier for members, the public and the Commission to navigate the rules of each market. The Exchange therefore proposes to adopt a framework of rule numbering that is based on the current rules governing the NYSE Arca equities market: NYSE Arca Rules 0 through 3, 4–E through 9–E, and 10 through 14.[8]

As proposed, this framework would use the current rule numbering scheme of the rules governing the NYSE Arca equities market, and would consist of the following proposed rules:

RULE 0 REGULATION OF THE EXCHANGE AND ETP HOLDERS
RULE 1 DEFINITIONS
RULE 2 TRADING PERMITS
RULE 3 ORGANIZATION AND ADMINISTRATION
RULE 4 CAPITAL REQUIREMENTS, FINANCIAL REPORTS, MARGIN
RULE 5 EQUITIES LISTINGS
RULE 6 ORDER AUDIT TRAIL SYSTEM
RULE 7 EQUITIES TRADING
RULE 8 TRADING OF CERTAIN EXCHANGE DERIVATIVES
RULE 9 CONDUCTING BUSINESS WITH THE PUBLIC
RULE 10 DISCIPLINARY PROCEEDINGS, OTHER HEARINGS AND APPEALS
RULE 11 BUSINESS CONDUCT
RULE 12 ARBITRATION

[17] 17 CFR 200.30–3(a)(12).

[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. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16). Prior to the Acquisition, the Exchange was named ''National Stock Exchange, Inc.'' NYSE Group is a wholly-owned subsidiary of NYSE Holdings LLC, which is wholly owned by Intercontinental Exchange Holdings, Inc., a direct wholly-owned subsidiary of ICE. ICE is a public company listed on the New York Stock Exchange LLC (the ''NYSE'').

[5] *See* Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR–NSX–2017–04).

[6] *See* 82 FR 9258, *supra* note 4.

[7] *See* Trader Update dated January 18, 2017, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Group_NSX_Member_Notice.pdf.*

[8] *See* Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR–NYSEArca–2017–40), at 40046. Because the Exchange only has an equities market, the proposed rule framework would not require the ''–E'' designation for Rules 4 through 9.

RULE 13 CANCELLATION, SUSPENSION, AND REINSTATEMENT
RULE 14 LIABILITY OF DIRECTORS AND EXCHANGE

The Exchange proposes to establish this framework in order to facilitate the amendment and re-publication of its new rule book in advance of the re-launch of trading operations on the Exchange. The Exchange intends to file separate proposed rules changes for the substantive areas identified in its new rule book, as well as the related price list.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[9] in general, and furthers the objectives of Section 6(b)(5),[10] 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 rules would remove impediments to and perfect the mechanism of a free and open market because the proposed rule set establishing a rule numbering framework would promote transparency in Exchange rules by using consistent rule numbers with the equities market of NYSE Arca, which is the first market that migrated to the Pillar trading platform. The Exchange believes that using a common framework of rule numbers for the equity markets that operate on the Pillar trading platform will better allow members, regulators, and the public to navigate the Exchange's rulebook and better understand how equity trading is conducted on the Exchange.

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 rule change is not designed to address any competitive issue but rather to adopt a new rule numbering framework to support the Exchange's amendment and re-publication of its rule book that in turn will support the re-launch of its trading platform. The Exchange believes that the proposed rule change would promote consistency and transparency on both the Exchange and its affiliate NYSE Arca, thus making the Exchange's rules easier to navigate.

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)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

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–NYSENat–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 20549–1090.

All submissions should refer to File Number SR–NYSENat–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 such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENat–2017–04, and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21414 Filed 10–4–17; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32846]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 29, 2017.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2017. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 2017, and should be accompanied by proof of service on 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: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Putnam Vista Fund

[File No. 811–01561]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Putnam Multi-Cap Growth Fund and, on September 27, 2010, made a final distribution to its shareholders based on net asset value. Expenses of $725,531 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Date: The application was filed on August 3, 2017, and amended on August 24, 2017.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

Putnam Investment Grade Municipal Trust

[File No. 811–05901]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Putnam Municipal Opportunities Trust and, on February 25, 2008, made a final distribution to its shareholders based on net asset value. Expenses of $566,232 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Date: The application was filed on August 4, 2017, and amended on August 24, 2017.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

Tennenbaum Opportunities Fund V, LLC

[File No. 811–21960]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Date: The application was filed on September 6, 2017.

Applicant's Address: 2951 28th Street, Suite 1000, Santa Monica, California 90405.

Tennenbaum Opportunities Partners V, LP

[File No. 811–21992]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Date: The application was filed on September 6, 2017.

Applicant's Address: 2951 28th Street, Suite 1000, Santa Monica, California 90405.

Active Assets California Tax-Free Trust

[File No. 811–06350]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 20, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,644 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on September 7, 2017.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

Active Assets Government Securities Trust

[File No. 811–03165]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 20, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,645 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on September 7, 2017.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

Active Assets Money Trust

[File No. 811–03159]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 20, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,644 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on September 7, 2017.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

Active Assets Tax-Free Trust

[File No. 811–03162]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 20, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,644 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on September 7, 2017.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

Crow Point Global Dividend Plus Fund

[File No. 811–23030]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 27, 2017 and April 28, 2017, applicant made liquidating distributions to its shareholders, based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on September 12, 2017.

Applicant's Address: 25 Recreation Park Drive, Suite 110, Hingham, MA 02043.

Century Capital Management Trust

[File No. 811–09561]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Each series of applicant has transferred its assets to a corresponding series of Professionally Managed Portfolios and, on September 15, 2017, made a final distribution to its shareholders based on net asset value. Expenses of $473,317 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Date: The application was filed on September 19, 2017, and amended on September 26, 2017 and September 27, 2017.

Applicant's Address: Century Capital Management LLC, 100 Federal Street, 29th Floor, Boston, MA 02110.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21416 Filed 10–4–17; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15314 and #15315; Georgia Disaster Number GA–00100]

Presidential Declaration Amendment of a Major Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4338–DR), dated 09/15/2017.

Incident: Hurricane Irma.

Incident Period: 09/07/2017 through 09/20/2017.

DATES: Issued on 09/26/2017.

Physical Loan Application Deadline Date: 11/14/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2018.

ADDRESS: 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: The notice of the President's major disaster declaration for the State of Georgia, dated 09/15/2017, is hereby amended to establish the incident period for this disaster as beginning 09/07/2017 through 09/20/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–21458 Filed 10–4–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15330 and #15331; Seminole Tribe of Florida Disaster Number FL–00132]

Presidential Declaration of a Major Disaster for the Seminole Tribe of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Seminole Tribe of Florida (FEMA–4341–DR), dated 09/27/2017.

Incident: Hurricane Irma.

Incident Period: 09/04/2017 and continuing.

DATES: Issued on 09/27/2017.

Physical Loan Application Deadline Date: 11/27/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/27/2018.

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 President's major disaster declaration on 09/27/2017, 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 Areas (Physical Damage and Economic Injury Loans): Seminole Tribe of Florida and associated lands.

Contiguous Counties (Economic Injury Loans Only):

Florida: Broward, Collier, Glades, Hendry, Hillsborough, Saint Lucie.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.500
Homeowners without Credit Available Elsewhere	1.750
Businesses with Credit Available Elsewhere	6.610
Businesses without Credit Available Elsewhere	3.305
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	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 153308 and for economic injury is 153310.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–21452 Filed 10–4–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15300 and #15301; Puerto Rico Disaster Number PR–00030]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4336–DR), dated 09/10/2017.

Incident: Hurricane Irma.

Incident Period: 09/05/2017 through 09/07/2017.

DATES: Issued on 09/26/2017.

Physical Loan Application Deadline Date: 11/09/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/11/2018.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 09/10/2017, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Municipalities: Dorado, Gurabo, Naguabo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–21451 Filed 10–4–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15298 and #15299; Puerto Rico Disaster Number PR–00029]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4336–DR), dated 09/10/2017.

Incident: Hurricane Irma.

Incident Period: 09/05/2017 through 09/07/2017.

DATES: Issued on 09/26/2017.

Physical Loan Application Deadline Date: 11/09/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/11/2018.

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: The notice of the President's major disaster declaration for the Commonwealth of Puerto Rico, dated 09/10/2017, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Municipalities (Physical Damage and Economic Injury Loans): Catano, Dorado, Fajardo, Luquillo, Toa Baja, Vega Baja

Contiguous Municipalities (Economic Injury Loans Only):

Puerto Rico: Bayamon, Ceiba, Guaynabo, Manati, Morovis, San Juan, Toa Alta, Vega Alta

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–21449 Filed 10–4–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15314 and #15315; Georgia Disaster Number GA–00100]

Presidential Declaration Amendment of a Major Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4338–DR), dated 09/15/2017.

Incident: Hurricane Irma.

Incident Period: 09/07/2017 and continuing.

DATES: Issued on 09/26/2017.

Physical Loan Application Deadline Date: 11/14/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2018.

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: The notice of the President's major disaster declaration for the State of Georgia, dated 09/15/2017, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Charlton, Coffee

Contiguous Counties (Economic Injury Loans Only):

Georgia: Atkinson, Bacon, Ben Hill, Berrien, Irwin, Jeff Davis, Telfair, Ware

Florida: Baker

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–21453 Filed 10–4–17; 8:45 am]

BILLING CODE 8025–01–P

STATE JUSTICE INSTITUTE

Grant Guideline, Notice

AGENCY: State Justice Institute.

ACTION: Grant Guideline for FY 2018.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2018 State Justice Institute grants.

DATES: October 5, 2017.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *jonathan.mattiello@sji.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984 (42 U.S.C. 10701, *et seq.*), SJI is authorized to award grants, cooperative agreements, and contracts to state and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the state courts of the United States.

The following Grant Guideline is adopted by the State Justice Institute for FY 2018.

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I. The Mission of the State Justice Institute

SJI was established by State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 *et seq.*) to improve the administration of justice in the state courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, SJI is charged, by statute, with the responsibility to:

• Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

• Foster coordination and cooperation with the federal judiciary;

• Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

• Encourage education for judges and support personnel of state court systems through national and state organizations.

To accomplish these broad objectives, SJI is authorized to provide funding to state courts, national organizations which support and are supported by state courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the state courts. SJI is supervised by a Board of Directors appointed by the President, with the advice and consent of the Senate. The Board is statutorily composed of six judges; a state court administrator; and four members of the public, no more than two of the same political party.

Through the award of grants, contracts, and cooperative agreements, SJI is authorized to perform the following activities:

A. Support technical assistance, demonstrations, special projects, research and training to improve the administration of justice in the state courts;

B. Provide for the preparation, publication, and dissemination of information regarding state judicial systems;

C. Participate in joint projects with federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the state courts;

E. Encourage and assist in furthering judicial education; and,

F. Encourage, assist, and serve in a consulting capacity to state and local courts in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

SJI is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).*

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of state governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to state and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705 (b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. SJI may also make awards to state or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* SJI may enter into inter-agency agreements with federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

SJI is prohibited from awarding grants to federal, tribal, and international courts.

III. Scope of the Program

SJI is offering six types of grants in FY 2018: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Partner Grants, Strategic Initiatives Grants (SIG) Program, and the Education Support Program (ESP).

The SJI Board of Directors has established Priority Investment Areas for grant funding. SJI will allocate significant financial resources through grant-making for these Priority Investment Areas (in no ranking order):

• Opioids and the State Courts Response—SJI is supporting a comprehensive strategy for responding to the challenges facing state courts in addressing the national opioid crisis. Projects that address this Priority Investment Area will inform the work of the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSCA) National Opioid Task Force.

• Human Trafficking and the State Courts—Through the Human Trafficking and the State Courts Collaborative, addressing the impact of federal and state human trafficking laws on the state courts, and the challenges faced by state courts in dealing with cases involving trafficking victims and their families.

• Guardianship, Conservatorship, and Elder Issues—Assisting the state courts in improving their oversight responsibilities through electronic reporting, visitor programs, and training.

• Juvenile Justice Reform—innovative projects that have no other existing or potential funding sources (federal, state, or private) that will advance best practices in handling dependency and delinquency cases; promote effective court oversight of juveniles in the justice system; address the impact of trauma on juvenile behavior; assist the courts in identification of appropriate provision of services for juveniles; and address juvenile re-entry.

• Reengineering to Improve Court Operations—Assisting courts with the process of reengineering, regionalization or centralization of services, structural changes, and improving performance. This includes the innovative use of remote technology to improve the business operations of the courts, and provide for the transaction of court hearings without an appearance in a physical courtroom.

• Fines, Fees, and Bail Practices—Assisting courts in taking a leadership role in reviewing fines, fees, and bail practices to ensure processes are fair and access to justice is assured; implementing alternative forms of sanction; developing processes for indigency review; and transparency, governance, and structural reforms that promote access to justice, accountability, and oversight. Projects that address this Priority Investment Area will inform the work of the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSCA) National Task Force on Fines, Fees, and Bail Practices.

• Self-Represented Litigation—promoting court-based solutions to address increase in self-represented litigants; specifically making courts more user-friendly by simplifying court forms, providing one-on-one assistance, developing guides, handbooks, and instructions on how to proceed, developing court-based self-help

centers, and using Internet technologies to increase access.

• Language Access and the State Courts—improving language access in the state courts through remote interpretation (outside the courtroom), interpreter certification, and courtroom services (plain language forms, Web sites, etc.).

A. Project Grants

Project Grants are intended to support innovative education and training, research and evaluation, demonstration, and technical assistance projects that can improve the administration of justice in state courts locally or nationwide. Project Grants may ordinarily not exceed $300,000. Examples of expenses not covered by Project Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for Project Grants ordinarily may not exceed 36 months.

Applicants for Project Grants will be required to contribute a cash match of not less than 50 percent of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties. Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the Guideline prior to beginning the application process. Funding from other federal departments or agencies may not be used for cash match. If questions arise, applicants are strongly encouraged to consult SJI.

As set forth in Section I., SJI is authorized to fund projects addressing a broad range of program areas. Funding will not be made available for the ordinary, routine operations of court systems.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide state or local courts, or regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed $50,000. Examples of expenses not covered by TA Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 12 months. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project.

Applicants for TA Grants will be required to contribute a *total* match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $50,000 TA grant must provide a $25,000 match, of which up to $20,000 can be in-kind and not less than $5,000 must be cash. Funding from other federal departments and agencies may not be used for cash match. TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: (1) Enable courts or national court associations to modify and adapt model curricula, course modules, or conference programs to meet states' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT Grants may not exceed $30,000. Examples of expenses not covered by CAT Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for CAT Grants ordinarily may not exceed 12 months.

Applicants for CAT Grants will be required to contribute a match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $30,000 CAT grant must provide a $15,000 match, of which up to $12,000 can be in-kind and not less than $3,000 must be cash. Funding from other federal departments and agencies may not be used for cash match. CAT Grant application procedures can be found in section IV.C.

D. Partner Grants

Partner Grants are intended to allow SJI and federal, state, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. SJI and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award. Grant periods for Partner Grants ordinarily may not exceed 36 months.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by SJI must be matched at least dollar-for-dollar. Partner Grants are initiated and coordinated by SJI and its financial partner. More information on Partner Grants can be found in section IV.D.

E. Strategic Initiatives Grants

The Strategic Initiatives Grants (SIG) program provides SJI with the flexibility to address national court issues as they occur, and develop solutions to those problems. This is an innovative approach where SJI uses its expertise and the expertise and knowledge of its grantees to address key issues facing state courts across the United States.

The funding is used for grants or contractual services, and is handled at the discretion of the SJI Board of Directors and staff outside the normal grant application process (*i.e.,* SJI will initiate the project).

F. Education Support Program (ESP) for Judges and Court Managers

The Education Support Program (ESP) is intended to enhance the skills, knowledge, and abilities of state court judges and court managers by enabling them to attend out-of-state, or to enroll in online, educational and training programs sponsored by national and state providers that they could not otherwise attend or take online because of limited state, local, and personal budgets. The program only covers the cost of tuition up to a maximum of $1,000 per course. More information on the ESP program can be found in section IV.E.

IV. Grant Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See *www.sji.gov/forms* for Project Grant application forms.

1. Forms

a. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from SJI. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of

the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a state or local court must include a copy of Form B signed by the state's chief justice or state court administrator. The signature denotes that the proposed project has been approved by the state's highest court or the agency or council it has designated. It denotes further that, if applicable, a cash match reduction has been requested, and that if SJI approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Form (Form C)

Applicants must submit a Form C. In addition, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (see subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities (Form E)

Applicants other than units of state or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (see section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.,* to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives.

The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

b. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

c. Tasks, Methods and Evaluations

(1) Tasks and Methods. The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; the type of assistance determined; how suitable providers would be selected and briefed; and how reports would be reviewed.

(2) Evaluation. Projects should include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures,

technology, or services tested; or the validity and applicability of the research conducted. The evaluation plan should be appropriate to the type of project proposed.

d. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.,* no later than January 30, April 30, July 30, and October 30), per section VI.A.13.

Applicants should be aware that SJI is unlikely to approve a limited extension of the grant period without strong justification. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

e. Products

The program narrative in the application should contain a description of the product(s) to be developed (*e.g.,* training curricula and materials, Web sites or other electronic multimedia, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be submitted to SJI. The budget should include the cost of producing and disseminating the product to the state chief justice, state court administrator, and other appropriate judges or court personnel. If final products involve electronic formats, the applicant should indicate how the product would be made available to other courts. Discussion of this dissemination process should occur between the grantee and SJI prior to the final selection of the dissemination process to be used.

(1) Dissemination Plan. The application must explain how and to whom the products would be disseminated; describe how they would benefit the state courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the court community and the public at large (*i.e.,* whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

Applicants proposing to develop web-based products should provide for sending a notice and description of the document to the appropriate audiences to alert them to the availability of the Web site or electronic product (*i.e.,* a written report with a reference to the Web site).

Three (3) copies of all project products should be submitted to SJI, along with an electronic version in HTML or PDF format. Discussions of final product dissemination should be conducted with SJI prior to the end of the grant period.

(2) Types of Products. The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (see section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use by others and again by the original participants in the course of their duties.

(3) SJI Review. Applicants must submit a final draft of all written grant products to SJI for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in Web site or multimedia format, applicants must provide for SJI review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of SJI (see section VI.A.11.f.).

(4) Acknowledgment, Disclaimer, and Logo. Applicants must also include in all project products a prominent acknowledgment that support was received from SJI and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. in the Grant Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a Web site or other multimedia product, unless SJI approves another placement. The SJI logo can be downloaded from SJI's Web site: *www.sji.gov.*

f. Applicant Status

An applicant that is not a state or local court and has not received a grant from SJI within the past three years should indicate whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of state governments, or a national non-profit organization for the education and training of state court judges and support personnel (see section II). If the applicant is a non-judicial unit of federal, state, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

g. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

h. Organizational Capacity

Applicants that have not received a grant from SJI within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from SJI within the past three years should describe only the changes in its organizational capacity, tax status, or

financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, SJI will require the organization to complete a financial capability questionnaire, which must be signed by a certified public accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

i. Statement of Lobbying Activities

Non-governmental applicants must submit SJI's Disclosure of Lobbying Activities Form E, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

j. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. Letters of general support for a project are also encouraged.

4. Budget Narrative

In addition to Project Grant applications, the following section also applies to Technical Assistance and Curriculum Adaptation and Training grant applications.

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. No grant funds or cash match may be used to pay the salary and related costs for a current or new employee of a court or other unit of government because such funds would constitute a supplantation of state or local funds in violation of 42 U.S.C. 10706(d)(1); this includes new employees hired specifically for the project. The salary and any related costs for a current or new employee of a court or other unit of government may only be accepted as in-kind match.

b. Fringe Benefit Computation

For non-governmental entities, the applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.,* the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.I.2.c. Prior written SJI approval is required for any consultant rate in excess of $800 per day; SJI funds may not be used to pay a consultant more than $1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the federal government. The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. In other words, grant funds cannot be used strictly for the purpose of purchasing equipment. Equipment purchases to support basic court operations will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited.

h. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine mailing costs. The bases for all postage estimates should be included in the budget narrative.

i. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

j. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. Recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs, *i.e.* salaries plus fringe benefits (see section VII.H.3.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.,* a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within

its approved indirect cost rate. These rates must be established in accordance with section VII.H.3. If the applicant has an indirect cost rate or allocation plan approved by any federal granting agency, a copy of the approved rate agreement must be attached to the application.

5. Submission Requirements

a. Every applicant must submit an original and one copy, by mail, of the application package consisting of Form A; Form B, if the application is from a state or local court, or a Disclosure of Lobbying Form (Form E), if the applicant is not a unit of state or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. However, applicants are encouraged to review the grant deadlines available on the SJI Web site. Receipt of each application will be acknowledged by letter or email.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

Applicants for TA Grants may submit an original and one copy, by mail, of a detailed letter describing the proposed project, as well as a Form A—State Justice Institute Application; Form B—Certificate of State Approval from the State Supreme Court, or its designated agency; and Form C—Project Budget in Tabular Format (see *www.sji.gov/forms*).

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. Need for Funding. The applicant must explain the critical need facing the applicant, and the proposed technical assistance that will enable the applicant meet this critical need. The applicant must also explain why state or local resources are not sufficient to fully support the costs of the project. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

b. Project Description. The applicant must describe how the proposed project addressed one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

The applicant must describe the tasks the consultant will perform, and how would they be accomplished. In addition, the applicant must identify which organization or individual will be hired to provide the assistance, and how the consultant was selected. If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and SJI upon completion of the technical assistance.

c. Likelihood of Implementation. What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants must follow the same guidelines provided under Section IV.A. A completed Form C—Project Budget, Tabular Format and budget narrative must be included with the letter requesting technical assistance.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.,* the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $800 per day must be approved in advance by SJI, and that no consultant will be paid more than $1,100 per day from SJI funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the SJI.

Recipients of TA Grants must maintain appropriate documentation to support expenditures.

4. Submission Requirements

Letters of application should be submitted according to the grant deadlines provided on the SJI Web site.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Letters of general support for the project are also encouraged. Support letters may be submitted under separate cover; however, they should be received by the same date as the application.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

Applicants must submit an original and one copy, by mail, of a detailed letter as well as a Form A—State Justice Institute Application; Form B—Certificate of State Approval; and Form C—Project Budget, Tabular Format (see *www.sji.gov/forms*).

2. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information.

a. For adaptation of a curriculum:

(1) Project Description. The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not. Due to the high costs of travel to attend training events, the innovative use of distance learning is highly encouraged.

The applicant must provide the title of the curriculum that will be adapted, and identify the entity that originally developed the curriculum. The applicant must also address the following questions: Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.,* from a single local jurisdiction, from across the state, from a multi-state region, from across the nation)?

(2) Need for Funding

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

The applicant should explain why state or local resources are unable to fully support the modification and presentation of the model curriculum. The applicant should also describe the potential for replicating or integrating the adapted curriculum in the future using state or local funds, once it has been successfully adapted and tested. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

(3) Likelihood of Implementation. The applicant should provide the proposed timeline, including the project start and end dates, the date(s) the judicial branch education program will be presented, and the process that will be used to modify and present the program. The applicant should also identify who will serve as faculty, and how they were selected, in addition to the measures taken to facilitate subsequent presentations of the program. Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.

(4) Expressions of Interest by Judges and/or Court Personnel. Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? Applicants may demonstrate this by attaching letters of support.

b. For training assistance:

(1) Need for Funding. The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

The applicant should describe the court reform or initiative prompting the need for training. The applicant should also discuss how the proposed training will help the applicant implement planned changes at the court, and why state or local resources are not sufficient to fully support the costs of the required training. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

(2) Project Description. The applicant must identify the tasks the trainer(s) will be expected to perform, which organization or individual will be hired, and, if in-house personnel are not the trainers, how the trainer will be selected. If a trainer has not yet been identified, the applicant must describe the procedures and criteria that will be used to select the trainer. In addition, the applicant should address the following questions: What specific tasks would the trainer and court staff or regional court association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How will the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost.

(3) Likelihood of Implementation. The applicant should explain what steps have been or will be taken to coordinate the implementation of the training. For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the reform and initiate the training proposed, how will the applicant secure their involvement in the development and implementation of the training?

3. Budget and Matching State Contribution

Applicants must also follow the same guidelines provided under Section IV.A. Applicants should attach a copy of budget Form C and a budget narrative that describes the basis for the computation of all project-related costs and the source of the match offered.

4. Submission Requirements

For curriculum adaptation requests, applicants should allow at least 90 days between the Board meeting and the date of the proposed program to allow

sufficient time for needed planning. Letters of support for the project are also encouraged. Applicants are encouraged to call SJI to discuss concerns about timing of submissions.

D. Partner Grants

SJI and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting state and local courts. SJI may solicit brief proposals from potential grantees to fellow financial partners as a first step. Should SJI be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant.

E. Education Support Program (ESP)

The Education Support Program (ESP) supports full-time state court judges and court managers to attend courses that enhance the knowledge, skills, and abilities which they could not otherwise attend because of limited, state, local, or personal budgets. Beginning in FY 2018, the National Judicial College (NJC) and the National Center for State Courts/Institute for Court Management (ICM) will administer the ESP program separately, in partnership and with funding from SJI.

a. Covered Costs. The ESP program only covers the costs of tuition up to a maximum of $1,000 per award. Awards will be made for the exact amount requested for tuition. Funds to play tuition in excess of $1,000, and other costs of participating in a course such as travel, transportation, meals, materials, and transportation to and from airports (including rental cars) at the site of the educational program, must be obtained from other sources or be borne by the ESP award recipient.

b. Eligible Recipients. Because of the limited amount of funding available, only full-time judges of state or local trial and appellate courts; full-time professional, state or local court personnel with management and supervisory responsibilities or on a professional management career track; and supervisory and management probation personnel in judicial branch probation offices are eligible for the program. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible. Applicants will be limited to one ESP award every other fiscal year (*i.e.* if awarded an ESP in FY 2018, the applicant will remain ineligible until FY 2020), unless the course specifically assumes multi-year participation as part of a certificate program.

c. Eligible Courses. Awards are only for courses presented by the NJC and ICM in a U.S. jurisdiction to participants in the U.S. or U.S. Territories. These courses are designed to enhance the skills of new or experienced judges and court managers. Participation during annual or mid-year conferences or meetings of a state or national organization does not qualify for ESP purposes, even though the conference may include workshops or other training sessions.

d. How and When To Apply.

For NJC Courses: To seek an ESP to attend an NJC course, simply find the course you wish to attend on the NJC Web site: *www.judges.org/courses,* and click ''register.'' During the registration process, the Web site will ask whether you need a scholarship to attend. Simply follow the online instructions to request tuition assistance. If you have any questions about this process, you may contact NJC Scholarship Coordinator Rebecca Bluemer, at *bluemer@judges.org* or 800–225–8343. The NJC reserves the right to apply additional selection criteria.

For ICM Courses: To seek an ESP to participate in the ICM Fellows Program, submit a completed application to ICM Education Program Manager Amy McDowell, at *amcdowell@ncsc.org.* If you have questions about this process, you may contact her at 757–259–1552 or via email. To seek an ESP to participate in an ICM course, find the course you wish to attend on the ICM Web site: *www.courses.ncscs.org,* and click ''register.'' During the registration process, the Web site will ask if you need a scholarship to participate. Follow the online instructions to request tuition assistance. If you have any questions about this process, you may contact ICM Director of National Programs Margaret Allen, at *mallen@ncsc.org* or 757–259–1581. ICM reserves the right to apply additional selection criteria.

e. Responsibilities of ESP Award Recipients. Recipients are responsible for disseminating the information received from the course, when possible, to their court colleagues locally, and if possible, throughout the state. The NJC and ICM may impose additional requirements on recipients.

V. Application Review Procedures

A. Preliminary Inquiries

SJI staff will answer inquiries concerning application procedures.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. SJI will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for state courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and,

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

b. In determining which projects to support, SJI will also consider whether the applicant is a state court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under SJI's enabling legislation (see section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the federal courts or help state courts enforce federal constitutional and legislative requirements; and the level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired or the specific

criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and,

e. The reasonableness of the proposed budget.

SJI also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to SJI in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

a. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and,

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

b. For training assistance:

(1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget.

SJI will also consider factors such as the reasonableness of the amount requested; compliance with match requirements; diversity of subject matter, geographic diversity; the level of appropriations available to SJI in the current year; and the amount expected to be available in succeeding fiscal years.

4. Partner Grants

The selection criteria for Partner Grants will be driven by the collective priorities of SJI and other organizations and their collective assessments regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like.

C. Review and Approval Process

1. Project Grant Applications

SJI's Board of Directors will review the applications competitively. The Board will review all applications and decide which projects to fund. The decision to fund a project is solely that of the Board of Directors. The Chairman of the Board will sign approved awards on behalf of SJI.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

The Board will review the applications competitively. The Board will review all applications and decide which projects to fund. The decision to fund a project is solely that of the Board of Directors. The Chairman of the Board will sign approved awards on behalf of SJI.

3. Partner Grants

SJI's internal process for the review and approval of Partner Grants will depend on negotiations with fellow financiers. SJI may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will be approved by the Board of Directors.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned.

E. Notification of Board Decision

SJI will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except ESP applications), if requested, SJI will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal in a subsequent funding cycle.

F. Response to Notification of Approval

With the exception of those approved for ESP awards, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to SJI within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final award document will include a Special Condition that will require additional grantee reporting and SJI review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in other situations.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by SJI. The Board of Directors has approved additional policies governing the use of SJI grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by SJI may be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to SJI. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of SJI grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.I. for the requirements of such audits).

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

5. Conflict of Interest

Personnel and other officials connected with SJI-funded programs

must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which SJI funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of SJI project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of SJI-sponsored work, such fact shall be promptly and fully reported to SJI. Unless there is a prior agreement between the grantee and SJI on disposition of such items, SJI shall determine whether protection of the invention or discovery shall be sought.

7. Lobbying

a. Funds awarded to recipients by SJI shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by federal, state or local agencies, or to influence the passage or defeat of any legislation by federal, state or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than ESP award recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. In-kind match consists of contributions of time and/or services of current staff members, new employees, space, supplies, etc., made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project or that portion of the grantee's federally-approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75 percent of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of SJI, match may be incurred from the date of the Board of Directors' approval of an award. The amount and nature of required match depends on the type of grant (see section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, SJI may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.D.1.). Match should be expended at the same rate as SJI funding.

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. The match requirement may be waived in exceptionally rare circumstances upon the request of the chief justice of the highest court in the state or the highest ranking official in the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section V.B.1.b.).

Other federal department and agency funding may not be used for cash match.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds. Recipients of SJI funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available SJI funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify SJI or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of SJI funds must acknowledge prominently on all products developed with grant funds that support was received from the SJI. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a multimedia product, unless another placement is approved in writing by SJI. This includes final products printed or otherwise reproduced during the grant period, as well as re-printings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available on SJI's Web site: *www.sji.gov/forms.*

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI–[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

(3) In addition to other required grant products and reports, recipients must provide a one page executive summary of the project. The summary should include a background on the project, the tasks undertaken, and the outcome. In

addition, the summary should provide the performance metrics that were used during the project, and how performance will be measured in the future.

b. Charges for Grant-Related Products/ Recovery of Costs

(1) SJI's mission is to support improvements in the quality of justice and foster innovative, efficient solutions to common issues faced by all courts. SJI has recognized and established procedures for supporting research and development of grant products (*e.g.* a report, curriculum, video, software, database, or Web site) through competitive grant awards based on merit review of proposed projects. To ensure that all grants benefit the entire court community, projects SJI considers worthy of support (in whole or in part), are required to be disseminated widely and available for public consumption. This includes open-source software and interfaces. Costs for development, production, and dissemination are allowable as direct costs to SJI.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain SJI's prior written approval of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either SJI grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of SJI-funded project or other purposes consistent with the State Justice Institute Act that have been approved by SJI (see section VII.F.).

c. Copyrights

Except as otherwise provided in the terms and conditions of a SJI award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Due Date

All products and, for TA and CAT grants, consultant and/or trainer reports (see section VI.B.1 & 2) are to be completed and distributed (see below) not later than the end of the award period, not the 90-day close out period. The latter is only intended for grantee final reporting and to liquidate obligations (see section VII.J.).

e. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Three (3) copies of each final product developed with grant funds to SJI, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required; and

(2) An electronic version of the product in HTML or PDF format to SJI.

f. SJI Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of SJI. Grantees shall submit a final draft of each written product to SJI for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit SJI review and incorporation of any appropriate changes required by SJI. Grantees must provide for timely reviews by the SJI of Web site or other multimedia products at the treatment, script, rough cut, and final stages of development or their equivalents.

g. Original Material

All products prepared as the result of SJI-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by SJI may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of SJI funds other than ESP awards must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.G.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.J.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis backup files containing research and evaluation data collected under an SJI grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council. The supreme court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)). See section VII.B.2.

16. Supplantation and Construction

To ensure that SJI funds are used to supplement and improve the operation of state courts, rather than to support basic court services, SJI funds shall not be used for the following purposes:

a. To supplant state or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures.

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, SJI may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with SJI funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by SJI that the property will continue to be used for the authorized purposes of the SJI-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to SJI one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply, unless specific arrangements are determined by the Partners.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, sub-grantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of SJI for the financial management and disposition of funds;

3. Generating financial data to be used in planning, managing, and controlling projects; and

4. Facilitating an effective audit of funded programs and projects.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from SJI are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of the State Supreme Court

a. Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council.

b. The state supreme court or its designee shall receive all SJI funds awarded to such courts; be responsible for assuring proper administration of SJI funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) Reviewing Financial Operations. The state supreme court or its designee should be familiar with, and periodically monitor, its sub-grantee's financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) Recording Financial Activities. The sub-grantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the state supreme court or its designee in summary form. Sub-grantee expenditures should be recorded on the

books of the state supreme court or evidenced by report forms duly filed by the sub-grantee. Matching contributions provided by sub-grantees should likewise be recorded, as should any project income resulting from program operations.

(3) Budgeting and Budget Review. The state supreme court or its designee should ensure that each sub-grantee prepares an adequate budget as the basis for its award commitment. The state supreme court should maintain the details of each project budget on file.

(4) Accounting for Match. The state supreme court or its designee will ensure that sub-grantees comply with the match requirements specified in this Grant Guideline (see section VI.A.8.).

(5) Audit Requirement. The state supreme court or its designee is required to ensure that sub-grantees meet the necessary audit requirements set forth by SJI (see sections I. and VI.A.3. below).

(6) Reporting Irregularities. The state supreme court, its designees, and its sub-grantees are responsible for promptly reporting to SJI the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its sub-grantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by SJI must be structured and executed on a ''Total Project Cost'' basis. That is, total project costs, including SJI funds, state and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions should be applied at the same time as the obligation of SJI funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of SJI, contributions made following approval of the grant by the Board of Directors, but before the beginning of the grant, may be counted as match. If a proposed cash or in-kind match is not fully met, SJI may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does SJI funds and required matching shares. For all grants made to state and local courts, the state supreme court has primary responsibility for grantee/sub-grantee compliance with the requirements of this section (see subsection B.2. above).

E. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, sub-grants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State supreme courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and sub-grant awards, applications, and required grantee/sub-grantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, sub-grant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and sub-grantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and sub-grantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/sub-grantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and sub-grantees must give any authorized representative of SJI access to and the right to examine all records, books, papers, and documents related to an SJI grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to SJI (see subsection G.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A state and any agency or instrumentality of a state, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to sub-grantees through a state, the sub-grantees are not held accountable for interest earned on advances of project funds. Local units of government and

nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/sub-grantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with prior written approval from SJI. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of SJI. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports (Form F) and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to SJI in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all SJI grant funds and grantees.

Request for Reimbursement of Funds. Grantees will receive funds on a reimbursable, U.S. Treasury ''check-issued'' or electronic funds transfer (EFT) basis. Upon receipt, review, and approval of a Request for Reimbursement (Form R) by SJI, payment will be issued directly to the grantee or its designated fiscal agent. The Form R, along with the instructions for its preparation, and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT) are available on the Institute's Web site: *www.sji.gov/forms.*

2. Financial Reporting

a. General Requirements. To obtain financial information concerning the use of funds, SJI requires that grantees/sub-grantees submit timely reports for review.

b. Due Dates and Contents. A Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to SJI funds, state and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report (Form F), along with instructions, are provided at *www.sji.gov/forms.* If a grantee requests substantial payments for a project prior to the completion of a given quarter, SJI may request a brief summary of the amount requested, by object class, to support the Request for Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant reimbursement.

H. Allowability of Costs

1. Costs Requiring Prior Approval

a. Pre-agreement Costs. The written prior approval of SJI is required for costs considered necessary but which occur prior to the start date of the project period.

b. Equipment. Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of SJI is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. Consultants. The written prior approval of SJI is required when the rate of compensation to be paid a consultant exceeds $800 a day. SJI funds may not be used to pay a consultant more than $1,100 per day.

d. Budget Revisions. Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

2. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the federal government. SJI funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting, or conference of that organization.

3. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although SJI's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a federal agency. However, recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (salaries plus fringe benefits).

a. Approved Plan Available.

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to SJI.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.,* accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

I. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a state or local court receiving a sub-grant from the state supreme court. The audit may be of the entire grantee or sub-grantee organization or of the specific project funded by the Institute. Audits conducted using generally accepted auditing standards in the United States will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a state or local

agency authorized to audit government agencies.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to SJI on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, SJI will not make a subsequent grant award to an applicant that has an unresolved audit report involving SJI awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active SJI grants to that organization.

J. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see subsection J.2. below), the following documents must be submitted to SJI by grantees:

a. Financial Status Report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by SJI. Final payment requests for obligations incurred during the award period must be submitted to SJI prior to the end of the 90-day close-out period.

b. Final Progress Report. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation. These reporting requirements apply at the conclusion of every grant.

2. Extension of Close-out Period

Upon the written request of the grantee, SJI may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Grant Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of SJI:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.H.1.d.).

2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see subsection E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see subsections F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VI.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see subsection H. below).

11. A transfer of the grant to another recipient.

12. Pre-agreement costs (see section VII.I.2.a.).

13. The purchase of automated data processing equipment and software (see section VII.H.1.b.).

14. Consultant rates (see section VII.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify SJI, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help SJI's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the SJI Executive Director. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by SJI. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification to SJI.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section VII.J.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence

must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/sub-grantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by SJI.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, SJI must be notified immediately. In such cases, if the grantee/sub-grantee wishes to terminate the project, SJI will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to SJI for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by SJI.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by SJI. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of SJI at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to SJI.

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BILLING CODE 6820–SC–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Greenville SCTAC Airport, Greenville, South Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Notice is being given that the Federal Aviation Administration (FAA) is considering a request from the City and County of Greenville to waive the requirement that one parcel (350.285 acres) of surplus property, located at the Greenville SCTAC Airport be used for aeronautical purposes. Currently, ownership of the property provides for protection of FAR Part 77 surfaces and compatible land use.

DATES: Comments must be received on or before November 6, 2017.

ADDRESSES: Documents are available for review by prior appointment at the following location: Atlanta Airports District Office, Attn: Anna Lynch, Program Manager, 1701 Columbia Ave., Room 220, College Park, Georgia 30337–2747, Telephone: (404) 305–6746.

Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Anna Lynch, Program Manager, 1701 Columbia Ave., Room 220, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Danny Moyd, Director of Properties, SCTAC at the following address: South Carolina Technology & Aviation Center SCTAC, 2 Exchange Street, Greenville, South Carolina 29605.

FOR FURTHER INFORMATION CONTACT: Anna Lynch, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Room 220, College Park, Georgia 30337–2747, (404) 305–6746. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the City and County of Greenville to release one parcel of surplus property (350.285 acres) at the Greenville SCTAC Airport. The parcel was originally conveyed to the City and County of Greenville on January 1964 under the powers and authority contained in the provisions of the Surplus Property Act of 1944. The City and County of Greenville will retain ownership of this parcel while establishing a land lease for any non aeronautical development.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Greenville SCTAC Airport.

Issued in Atlanta, Georgia, on September 20, 2017.

Larry F. Clark,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 2017–21501 Filed 10–4–17; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0006]

Agency Information Collection Activities; Reinstatement of an Information Collection: Practices of Household Goods Brokers; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments; correction.

SUMMARY: This document makes a correction to a notice published in the **Federal Register** on August 16, 2014, regarding the reinstatement of an Information Collection Request for the Practices of Household Goods Brokers. The correction involves the inclusion of a citation and clarification in the explanation of the reduction of burden hours.

FOR FURTHER INFORMATION CONTACT: Monique Riddick, Commercial Enforcement and Investigations

Division, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–366–8045; email *monique.riddick@dot.gov.*

SUPPLEMENTARY INFORMATION: For FMCSA's notice published on August 16, 2017, (82 FR 38989), the following corrections are made:

In column three of page 38988, in the Summary paragraph, the last sentence should read ''The reinstatement of this ICR is necessary to support FMCSA's responsibility to ensure consumer protection in the transportation of household goods (HHG).''

In column one of page 38989, add the following sentence to be the first sentence in the BACKGROUND section: ''The reinstatement of this ICR is necessary to support the requirements of subpart B of 49 CFR part 371 and FMCSA's responsibility to ensure consumer protection in the transportation of household goods (HHG).''

In column two of page 38989, the paragraph that begins ''With this renewal'' should read: With this renewal, FMCSA makes a change to the annual burden hours associated with this ICR. There is a reduction of 19,522 annual burden hours due to the removal of 1,000 burden-hours associated with new entrant household goods brokers setting up a separate accounting system to comply with 49 CFR 371.13. FMCSA no longer believes the inclusion of such burden hours is necessary as such usual and customary actions to comply with regulatory requirements do not need to be included in burden calculations. Further, the number of burden hours is reduced due to a reduced estimate of the number of HHG brokers that are impacted by this information collection.

Issued on: September 27, 2017.

Kelly Regal,

Associate Administrator, Office of Research and Information Technology.

[FR Doc. 2017–21454 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0123; FMCSA–2014–0124]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for three individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on April 8, 2017. The exemptions expire on April 8, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *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.*

II. Background

On April 5, 2017, FMCSA published a notice announcing its decision to renew exemptions for three individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (82 FR 16661). The public comment period ended on May 5, 2017 and one comment was received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to driver a CMV if that person:

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received one comment in this preceeding. Janet S. Pratcher from the University of Memphis, Department of Social Work, wrote in support of renewing the exemptions for the three individuals in this notice for two years.

IV. Conclusion

Based upon its evaluation of the three renewal exemption applications and comment received, FMCSA announces its' decision to exempt the following drivers from the hearing requirement in 49 CFR 391.41(b)(11).

As of April 8, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate (CMV) drivers (79 FR 90336; 80 FR 18926; 81 FR 12556): Clark Dobson (CA); Gregory Hill (MS); and Ronald Ruttler (WA).

The drivers were included in docket numbers FMCSA–2012–0123 and FMCSA–2014–0124. Their exemptions were applicable as of April 8, 2017, and will expire on April 8, 2019.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than

was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: September 19, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–21455 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2012–0033]

Notice of Intent To Grant a Buy America Waiver to the City of Raleigh To Use Certain Non-Domestic Components of a Fire Alarm System

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public it intends to grant the City of Raleigh (City) a waiver from FRA's Buy America requirement to use certain non-domestic components of a fire alarm system Code Electric, Inc. provided for the Raleigh Union Station project, in partnership with the North Carolina Department of Transportation (NCDOT). Code Electric, Inc. is an electrical contractor for the Raleigh Union Station project.

DATES: Written comments on FRA's determination to grant a Buy America waiver to the City should be provided to the FRA on or before October 12, 2017.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA–2012–0033. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.* Commenters should follow the instructions below for mailed and hand-delivered comments:

(1) *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001; or

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must reference the ''Federal Railroad Administration'' and include docket number FRA–2012–0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting responses to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590, (202) 493–0078, *John.Johnson@dot.gov.*

SUPPLEMENTARY INFORMATION: FRA provided information on its reasons for granting this waiver in a letter to the City of Raleigh, quoted below:

Mr. Richard L. Kelly
Engineering Services Director
City of Raleigh
One Exchange Plaza
219 Fayetteville Street, Suite 801
Raleigh, NC 27601

Re: Request for Waiver of Buy America Requirement

Dear Mr. Kelly:

On September 23, 2016, Code Electric, Inc. requested a waiver from the Federal Railroad Administration's (FRA) Buy America requirement (49 U.S.C. 24405(a)) to use certain components of a fire alarm system, which cannot be sourced in the United States, in the Raleigh Union Station project (Project). The Project is for construction of a passenger train station in downtown Raleigh that will replace the existing Amtrak station. The City of Raleigh (City), through its contractor, awarded Code Electric, Inc. the electrical construction sub-contract for the Project. The $90 million project is funded in part by two Transportation Infrastructure Generating Economic Recovery grants of $26.5 million from Fiscal Year (FY) 2012 and $11.5 million from FY 2013 to the City, and $15 million from a $520 million American Recovery and Reinvestment Act of 2009 grant to the North Carolina Department of Transportation. FRA is providing its decision on the waiver to the City as the FRA grant recipient for this Project.

The Project is subject to 49 U.S.C. 24405(a)(1). Section 24405(a)(1) requires the steel, iron, and manufactured goods used in a project to be produced in the United States. FRA may waive the Buy America requirements if FRA finds that: (1) Applying the requirements would be inconsistent with the public interest; (2) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amounts or are not of a satisfactory quality; (3) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (4) including domestic material will increase the cost of the overall project by more than 25 percent.

For the reasons stated in this letter, FRA grants a ''non-availability'' Buy America waiver. This waiver applies only to this Project.

Code Electric seeks a waiver for the following components (Components) for use in the Project:

Description	Quantity	Description	Quantity
Addressable Pull Station	15	Addressable Module Flush Cover	22
Duct Sensor Housing	6	Overvoltage Suppressor	1
Remote Test Station	6	Relay IAM	13
Sampling Tube 73″, Plastic	6	Addressable Module Flush Cover	13
Relay IAM	6	Relay Id NET 2 IAM W/T Sense	1
Addressable Module Flush Cover	6	10 AH Battery	2
Indoor/Outdoor Surface Back Box	8	Address Module Isolator	10
Speaker Low Profile Ceiling Mount	9	Addressable Module Flush Cover	10
Supervised IAM	22	50 AH Battery	4
IAM Bracket	22	Laptop	1

The total cost of the fire alarm system is less than $30,000, and the total cost of the non-U.S. manufactured components is less than $10,000.

Code Electric asserts the following facts in support of the waiver request:

• Code Electric received several bids for the fire alarm system from suppliers Honeywell, Tyco Simplex Grinnell, and Edwards (United Technologies). Although these suppliers source many fire alarm system components from U.S. manufacturers, none of the suppliers offered a one hundred percent Buy America-compliant system. All fire alarm system suppliers use a mix of foreign and US-made components; and

• The foreign components used by suppliers vary. However, due to programming, interoperability, and certification issues, the components are not interchangeable among systems. Therefore, suppliers cannot swap out components to meet Buy America.

FRA independently verified these assertions with its Monitoring and Technical Assistance Contractor (MTAC), TranSystems. An electrical engineer from FRA's MTAC explained that large international suppliers source or manufacture pieces of the fire alarm system in different countries. Further, many portions of the system are addressable (individually programmable), which means the software and hardware must be compatible and tested. In addition, fire alarm components and systems are UL® listed. UL® is a third-party, independent company that certifies safety compliance of many systems and their components, including fire alarm systems. Attempting to swap pieces of a fire alarm system would jeopardize its UL® listing and could cause product warranty and liability issues.

FRA concludes a waiver is appropriate under 49 U.S.C. 24405(a)(2)(B) for the Components because domestically-produced Components are not currently ''produced in sufficient and reasonably available amounts.'' 49 U.S.C. 24405(a)(2)(B). FRA bases this determination on the following:

• For competitively bid, commercial products for buildings, such as fire alarm systems, FRA views receiving no Buy America-compliant bids as presumptive evidence the conditions exist to grant a non-availability waiver;

• On October 28, 2016, FRA provided public notice of this waiver request and a 15-day opportunity for comment on its Web site. FRA also emailed notice to over 6,000 recipients that requested Buy America notices through ''GovDelivery.'' FRA received one comment. However, the commenter did not provide any information about a domestic source for a fully Buy America-compliant fire alarm system; and

• FRA's MTAC concurred with Code Electric that due to programming, interoperability, and certification issues, components are not interchangeable among systems. Therefore, fire alarm system suppliers cannot swap out components to meet Buy America.

This waiver applies only to this Project for these specific components.

Under 49 U.S.C. 24405(a)(4), FRA will publish this letter granting the Buy America waiver to the City in the **Federal Register** and provide notice of such finding and an opportunity for public comment after which this waiver will become effective.

Questions about this letter can be directed to, John Johnson, Attorney-Advisor, at *John.Johnson@dot.gov* or (202) 493–0078.

Sincerely,
Heath Hall
Acting Administrator
cc: Code Electric, Inc.

Brett A. Jortland,

Acting Deputy Chief Counsel.

[FR Doc. 2017–21441 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2017–0130; Notice No. 2017–11]

Hazardous Materials: Emergency Waiver No. 5

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of emergency waiver order.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is issuing an emergency waiver order to persons conducting operations under the direction of the Puerto Rico Public Service Commission within the Hurricane Maria emergency and disaster areas of Puerto Rico. This Waiver Order is effective September 28, 2017, and shall remain in effect for 7 days from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Adam Horsley, Deputy Assistant Chief Counsel for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, telephone: (202) 366–4400.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 49 U.S.C. 5103(c), the Acting Administrator for the Pipeline and Hazardous Materials Safety Administration (PHMSA), hereby declares that an emergency exists that warrants issuance of a Waiver of the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) to persons conducting operations under the direction of the Puerto Rico Public Service Commission (Carr. 8838 Km. 8.3, Sector El Cinco, San Juan, PR 00926) within the Hurricane Maria emergency and disaster areas of Puerto Rico. The Waiver is granted to support the government of Puerto Rico in facilitating the transport of essential fuel.

On September 18, 2017, the President issued an Emergency Declaration for Hurricane Maria for the Commonwealth of Puerto Rico (EM–3391). On September 20, 2017, the President issued a Major Disaster Declaration for the Commonwealth of Puerto Rico (DR–4340).

This Waiver Order covers all areas identified in the Declarations. Pursuant to 49 U.S.C. 5103(c), PHMSA has authority delegated by the Secretary (49 CFR 1.97(b)(3)) to waive compliance with any part of the HMR provided that the grant of the waiver is: (1) In the public interest; (2) not inconsistent with the safety of transporting hazardous materials; and (3) necessary to facilitate the safe movement of hazardous materials into, from, and within an area of a major disaster or emergency that has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Given the continuing impacts caused by Hurricane Maria, PHMSA's Acting Administrator has determined that regulatory relief is in the public interest and necessary to ensure the safe transportation in commerce of hazardous materials while the Puerto Rican government executes its recovery and cleanup efforts. Specifically, PHMSA's Acting Administrator finds that issuing this Waiver Order will allow for the safe transportation of fuel. By execution of this Waiver Order, the hazardous materials training, testing, and certification requirements in 49 CFR part 172 subpart H and part 177 are waived except as specified below for persons conducting operations under the direction of the Puerto Rico Public Service Commission within the Hurricane Maria emergency and disaster areas of Puerto Rico. Such persons are authorized to offer and transport fuel provided that the following conditions are met:

(1) The transport of the fuel must be accompanied by a law enforcement or military escort;

(2) The escort vehicle must have a copy of the Emergency Response Guidebook, Response Guide 128;

(3) Drivers must have three years of professional driving experience and otherwise be licensed to operate the vehicle based on its size and weight; and

(4) Unloading procedures must be overseen by a qualified person as defined in 49 CFR 177. 834(i)(4) or a driver who has received training (testing and certification is not required) that includes, at a minimum, these items:

(a) Bonding the cargo tank;

(b) Preventing overfilling of tanks at point of delivery;

(c) Controlling the flow of product;

(d) Using emergency cut-off equipment; and

(e) Securing unloading equipment for transport.

Additionally, during driver unloading, the unloading area must be cleared of all non-essential personnel for a distance of 100 feet. Compliance with all other requirements of the HMR is required.

This Waiver Order is effective September 28, 2017, and shall remain in effect for 7 days from the date of issuance.

Issued in Washington, DC.

Drue Pearce,

Acting Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2017–21417 Filed 10–4–17; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 14, 2017.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, November 14, 2017, at 12:00 p.m., Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 1, 2017.

Susan Jimerson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–21478 Filed 10–4–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 29, 2017.

FOR FURTHER INFORMATION CONTACT: Gretchen Swayzer at 1–888–912–1227 or 469–801–0769.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, November 29, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Gretchen Swayzer at 1–888–912–1227 or 469–801–0769, TAP Office, 4050 Alpha Rd, Farmers Branch, TX 75244, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: October 1, 2017.

Susan Jimerson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–21479 Filed 10–4–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 14, 2017.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Tuesday, November 14, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various special topics with IRS processes.

Dated: October 1, 2017.

Susan Jimerson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–21483 Filed 10–4–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 15, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or 202–317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, November 15, 2017, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or 202–317–3087, or write TAP Office, 1111 Constitution Avenue NW., Room 1509, National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing toll-free issues and public input is welcomed.

Dated: October 2, 2017.

Susan Jimerson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–21477 Filed 10–4–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 2, 2017.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or (202) 317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, November 2, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1–888–912–1227 or (202) 317–4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509, National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: October 1, 2017.

Susan Jimerson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–21480 Filed 10–4–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 21, 2017.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 1–888–912–1227 or (214) 413–6523.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, November 21, 2017, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Lisa Billups. For more information please contact Lisa Billups at 1–888–912–1227 or 214–413–6523, or write TAP Office 1114 Commerce Street, Dallas, TX 75242–1021, or post comments to the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: October 1, 2017.

Susan Jimerson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–21484 Filed 10–4–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will meet from 8 a.m. to 5 p.m. on the dates indicated below (unless otherwise listed):

Subcommittee	Date	Location
Surgery	November 15, 2017	20 F Conference Center.
Pulmonary Medicine	November 15, 2017	20 F Conference Center.
Infectious Diseases-B	November 16, 2017	20 F Conference Center.
Oncology-A/D	November 16, 2017	20 F Conference Center.
Hematology	November 17, 2017	20 F Conference Center.
Oncology-C	November 17, 2017	20 F Conference Center.
Cellular & Molecular Medicine	November 20, 2017	20 F Conference Center.
Oncology-B	November 20, 2017	20 F Conference Center.
Infectious Diseases-A	November 21, 2017	20 F Conference Center.

Subcommittee	Date	Location
Epidemiology	November 28, 2017	* VA Central Office.
Mental Health & Behavioral Sciences-A	November 28, 2017	20 F Conference Center.
Nephrology	November 28, 2017	20 F Conference Center.
Oncology-E	November 28, 2017	20 F Conference Center.
Immunology & Dermatology-A	November 29, 2017	20 F Conference Center.
Mental Health & Behavioral Sciences-B	November 29, 2017	20 F Conference Center.
Cardiovascular Studies-A	November 30, 2017	20 F Conference Center.
Endocrinology-A	November 30, 2017	20 F Conference Center.
Neurobiology-C	November 30, 2017	20 F Conference Center.
Neurobiology-A	December 1, 2017	20 F Conference Center.
Neurobiology-E	December 1, 2017	20 F Conference Center.
Endocrinology-B	December 4, 2017	20 F Conference Center,
Neurobiology-B	December 5, 2017	20 F Conference Center.
Special Panel for Sheep Review	December 5, 2017	* VA Central Office.
Neurobiology-F	December 6, 2017	* VA Central Office.
Cardiovascular Studies-B	December 7, 2017	20 F Conference Center.
Gastroenterology	December 7, 2017	20 F Conference Center.
Neurobiology-D	December 8, 2017	20 F Conference Center.
Gulf War Research	December 8, 2017	* VA Central Office.
Special Emphasis Panel on Million Veteran Prog Proj	January 11–12, 2018	20 F Conference Center.
Eligibility	January 19, 2018	20 F Conference Center.
JBL/CS SMRB	January 25, 2018	* VA Central Office.

The addresses of the meeting sites are:
20 F Conference Center, 20 F Street NW., Washington, DC.
VA Central Office, 1100 First Street NE., Suite 600, Washington, DC.
* Teleconference.

The purpose of the subcommittees is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review evaluation. Proposals submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research.

These subcommittee meetings will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals, which involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the subcommittee meetings is in accordance with Title 5 U.S.C. 552b(c)(6) and (9)(B).

Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Holly Krull, Ph.D., Manager, Merit Review Program (10P9B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 632–8522 or email at *holly.krull@va.gov.*

Dated: September 29, 2017.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–21376 Filed 10–4–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Agency Information Collection Activity Under OMB Review: Acquisition Regulation (VAAR) Construction Provisions and Clauses 852.236–72, 852.236.80, 852.236–82, 852.236–83, 852.236–84 and 852.236–88

AGENCY: The Office of Management (OM), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Management (OM), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 6, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0422'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0422'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Department of Veteran Affairs Acquisition Regulation (VAAR) Clauses 852.236–72, 852.236.80, 852.236–82, 852.236–83, 852.236–84 and 852.236–88.

OMB Control Number: 2900–0422.

Type of Review: Extension of a currently approved collection.

Abstract: This collection of information contains the following six collections of information for the following Department of Veterans Affairs Acquisition Regulation (VAAR) clauses: (1) VAAR clause 852.236–72, Performance of Work by the Contractor, requires contractors awarded a construction contract containing Federal Acquisition Regulation (FAR) clause 52.236–1, Performance of Work by the Contractor, to submit a statement

designating the branch or branches of contract work to be performed by the contractor's own forces. The FAR clause requires the contractor to perform a minimum percentage of the work under the contract with its own forces. This VAAR clause implements this FAR clause by requiring the contractor to provide information to the contracting officer on just how the contractor intends to fulfill this contractual obligation. The information is used by the contracting officer to ensure that the contractor complies with the contract requirements; (2) VAAR clause 852.236–80, Subcontracts and Work Coordination requires construction contractors, on contracts involving complex mechanical-electrical work, to furnish coordination drawings showing the manner in which utility lines will fit into available space and relate to each other and to the existing building elements. The intent of this information is to promote carefully planned work sequencing and proper trade coordination on construction contracts, to assure expeditious solutions to problems, and to avoid or minimize additional costs to the contractor and the Government. The information is used by the contracting officer and the VA engineer assigned to the project to resolve any problems relating to the installation of utilities on construction contracts; (3) VAAR clause 852.236–84, Schedule of Work Progress, requires construction contractors, on contracts that do not require the use of a NAS, to submit a progress schedule. The information is used by the contracting officer to track the contractor's progress under the contract and to determine whether or not the contractor is making satisfactory progress (4) VAAR clause 852.236–88, Contract Changes, supplements FAR clause 52.243–4, Changes. FAR clause 52.243–4 authorizes the contracting officer to order changes to a construction contract but does not specifically require the contractor to submit cost proposals for those changes. VAAR clause 852.236–88 requires contractors to submit cost proposals for changes ordered by the contracting officer or for changes proposed by the contractor. This information is needed to allow the contracting officer and the contractor to reach a mutually acceptable agreement on how much to pay the contractor for the proposed changes to the contract. It is also used by the contracting officer to determine whether or not to authorize the proposed changes or whether or not additional or alternate changes are needed; (5) VAAR clause 852.236–82, Payments under Fixed-Price Construction Contracts (without NAS–CPM), with its Alternate I, requires construction contractors to submit a schedule of costs for work to be performed under the contract. In addition, if the contract includes guarantee period services, Alternate I, requires the contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services. The information is used by the contracting officer to determine the correct amount to pay the contractor; (6) VAAR clause 852.236–83, Payments under Fixed-Price Construction Contracts (including NAS–CPM), with its Alternate I, requires construction contractors to submit a schedule of costs for work to be performed under the contract. In addition, if the contract includes guarantee period services, Alternate I, requires the contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services. The contracting officer uses the information to determine the correct amount to pay the contractor. The difference between this clause and the one above, 852.236–83, is that this clause requires the contractor to use a computerized Network Analysis System (NAS) to prepare the cost estimate. The Information is necessary for the Department of Veterans Affairs to administer construction contracts and to carry out its responsibility to construct, maintain, and repair real property for the department.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at Vol. 82, No. 142/Wednesday, July 26, 2017, pages 34746 and 34747.

Affected Public: Business or other for profit and not-for-profit institutions.

Estimated Annual Burden:

a. Clause 852.236–72, Performance of Work by the Contractor—60 hours.

b. Clause 852.236–80, Subcontracts and Work Coordination—920 hours.

c. Clause 852.236–84, Schedule of Work Progress—1,828.5 hours.

d. Clause 852.236–88, Contract Changes—729 hours.

e. Clause 852.236–82, Payments under Fixed-Price Construction Contracts (without NAS–CPM), with its Alternate I—1219 hours.

f. Clause 852.236.83, Payments under Fixed-Price Construction Contracts (including NAS–CPM), with its Alternate I—46 hours.

Estimated Average Burden per Respondent:

g. Clause 852.236–72, Performance of Work by the Contractor—1 hour.

h. Clause 852.236–80, Subcontracts and Work Coordination—10 hours.

i. Clause 852.236–84, Schedule of Work Progress—1 hour.

j. Clause 852.236–88, Contract Changes—3 hours.

k. Clause 852.236–82, Payments under Fixed-Price Construction Contracts (without NAS–CPM), with its Alternate I—1 hour.

l. Clause 852.236–83, Payments under Fixed-Price Construction Contracts (including NAS–CPM), with its Alternate I—.5 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Clause 852.236–72, Performance of Work by the Contractor—60.

b. Clause 852.236–80, Subcontracts and Work Coordination—92.

c. Clause 852.236–84, Schedule of Work Progress—1,219.

d. Clause 852.236–88, Contract Changes—243.

e. Clause 852.236–82, Payments under Fixed-Price Construction Contracts (without NAS–CPM), with its Alternate I—1,219.

f. Clause 852.236–83, Payments under Fixed-Price Construction Contracts (including NAS–CPM), with its Alternate I—92.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–21434 Filed 10–4–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: General Release for Medical Provider Information to the Department of Veterans Affairs (VA) and Authorization and Consent To Release Information to the Department of Veterans Affairs

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 6, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: General Release for Medical Provider Information to the Department of Veterans Affairs (VA) (VA Form 21–4142) and Authorization and Consent to Release Information to the Department of Veterans Affairs (VA Form 21–4142a).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA Forms 21–4142 will be used to authorize the disclosure of information to the VA and 21–4142a will be used to gather the necessary information to request medical provider information to the VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 125 on June 30, 2017, page 30004.

Affected Public: Individuals or Households.

Estimated Annual Burden: 11,033.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 132,400.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–21433 Filed 10–4–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Decision Ready Claims (DRC) Exam Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 6, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Decision Ready Claims (DRC) Exam Review (VA Form 21–0985).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA Form 21–0985 will be used to identify the condition(s) that a veteran would like VA to schedule a contract examination for in support of his/her Decision Ready Claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 142 on July 26, 2017, pages 34748.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,500.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–21432 Filed 10–4–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0666]

Agency Information Collection Activity: Information Regarding Apportionment of Beneficiary's Award

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 4, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0666'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Information Regarding Apportionment of Beneficiary's Award (VA Form 21–0788).

OMB Control Number: 2900–0666.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0788 is used to collect the information that is necessary to determine whether an apportionment may be authorized and the reasonable amount that may be awarded. Without this collection of information, VA would be unable to properly authorize apportionments of compensation and pension benefits.

Affected Public: Individuals and households.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 25,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–21431 Filed 10–4–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 82 Thursday,
No. 192 October 5, 2017

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List 25 Species as Endangered or Threatened Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500090022]

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List 25 Species as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to list 25 species as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that listing 14 Nevada springsnail species, Barbour's map turtle, Bicknell's thrush, Big Blue Springs cave crayfish, the Oregon Cascades—California population and Black Hills population of the black-backed woodpecker, the eastern population of the boreal toad, the Northern Rocky Mountains population of the fisher, Florida Keys mole skink, Great Sand Dunes tiger beetle, Kirtland's snake, Pacific walrus, and San Felipe gambusia is not warranted at this time. However, we ask the public to submit to us at any time any new information that becomes available concerning the stressors to any of the species listed above or their habitats.

DATES: The finding announced in this document was made on October 5, 2017.

ADDRESSES: Detailed descriptions of the basis for each of these findings are available on the Internet at *http://www.regulations.gov* under the following docket numbers:

Species	Docket No.
14 Nevada springsnails	FWS–R8–ES–2011–0001
Barbour's map turtle	FWS–R4–ES–2017–0065
Bicknell's thrush	FWS–R5–ES–2012–0056
Big Blue Springs cave crayfish	FWS–R4–ES–2017–0066
Black-backed woodpecker	FWS–R8–ES–2013–0034
Boreal toad	FWS–R6–ES–2012–0003
Fisher	FWS–R6–ES–2015–0104
Florida Keys mole skink	FWS–R4–ES–2017–0067
Great Sand Dunes tiger beetle	FWS–R6–ES–2017–0068
Kirtland's snake	FWS–R3–ES–2017–0039
Pacific walrus	FWS–R7–ES–2017–0069
San Felipe gambusia	FWS–R2–ES–2017–0024

Supporting information used to prepare these findings is available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT.** Please submit any new information, materials, comments, or questions concerning these findings to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
14 Nevada springsnails	For bifid duct pyrg: Carolyn Swed, Field Supervisor, Northern Nevada (Reno) Fish and Wildlife Office, 775–861–6337 For all other species: Glen Knowles, Field Supervisor, Southern Nevada Fish and Wildlife Office, 702–515–5230.
Barbour's map turtle	Catherine Phillips, Field Supervisor, Panama City Ecological Services Field Office, 850–769–0552.
Bicknell's thrush	Krishna Gifford, Listing Coordinator, Region 5 Regional Office, 413–253–8619.
Big Blue Springs cave crayfish	Catherine Phillips, Field Supervisor, Panama City Ecological Services Field Office, 850–769–0552.
Black-backed woodpeckers	Oregon Cascades—California population: Jenn Norris, Field Supervisor, Sacramento Fish and Wildlife Office, 916–414–6600 Black Hills population: Scott Larson, Field Supervisor, South Dakota Ecological Services Office, 605–224–8693.
Boreal toad	Drue DeBerry, Field Supervisor, Colorado and Nebraska Field Office, 303–236–4774.
Fisher	Jodi Bush, Field Supervisor, Montana Ecological Services Field Office, 406–449–5225, ext. 205.
Florida Keys mole skink	Roxanna Hinzman, Field Supervisor, South Florida Ecological Services Field Office, 772–469–4309.
Great Sand Dunes tiger beetle	Drue DeBerry, Field Supervisor, Colorado and Nebraska Field Office, 303–236–4774.
Kirtland's snake	Dan Everson, Field Supervisor, Ohio Ecological Services Field Office, 614–416–8993.
Pacific walrus	Patrick Lemons, Chief Marine Mammals Management, Region 7, 907–786–3668.
San Felipe gambusia	Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 512–490–0057, ext. 248.

If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Within 12 months after receiving any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants, we are required to make a finding whether or not the petitioned action is warranted (''12-month finding''), unless we determined that the petition did not contain substantial scientific or commercial information indicating that the petitioned action may be warranted (section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*)). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. ''Warranted but precluded'' means that (a) the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened

species, and (b) expeditious progress is being made to add qualified species to the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of that date. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We summarize below the information on which we based our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the 14 Nevada springsnail species, Barbour's map turtle, Bicknell's thrush, Big Blue Springs cave crayfish, Oregon Cascades-California and Black Hills populations of the black-backed woodpecker, eastern population of the boreal toad, Northern Rocky Mountains population of the fisher, Florida Keys mole skink, Great Sand Dunes tiger beetle, Kirtland's snake, Pacific walrus, and San Felipe gambusia meet the definition of ''endangered species'' or ''threatened species.'' More-detailed information about these species is presented in the species-specific assessment forms found on *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES** above).

In considering what stressors under the Act's five factors might indicate that the species may meet the definition of a threatened or endangered species, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor does not cause a species to meet the definition of a threatened or endangered species. If there is exposure and the species responds negatively, the stressor may be significant. In that case, we determine whether that stressor drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of impacts to a species. The combination of exposure and some corroborating evidence of how the species is likely affected could suffice. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is appropriate; similarly, the mere identification of stressors that do not affect a listed species negatively is insufficient to compel a finding that delisting is appropriate. For a species to be listed or remain listed, we require evidence that these stressors are operative threats to the species and its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In making these 12-month findings, we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

14 Nevada Springsnails: Spring Mountains Pyrg (*Pyrgulopsis deaconi*), Corn Creek Pyrg (*Pyrgulopsis fausta*), Moapa Pebblesnail (*Pyrgulopsis avernalis*), Moapa Valley Pyrg (*Pyrgulopsis carinifera*), Grated Tryonia (*Tryonia clathrata*), Blue Point Pyrg (*Pyrgulopsis coloradensis*), Hubbs Pyrg (*Pyrgulopsis hubbsi*), Pahranagat Pebblesnail (*Pyrgulopsis merriami*), White River Valley Pyrg (*Pyrgulopsis sathos*), Butterfield Pyrg (*Pyrgulopsis lata*), Hardy Pyrg (*Pyrgulopsis marcida*), Flag Pyrg (*Pyrgulopsis breviloba*), Lake Valley Pyrg (*Pyrgulopsis sublata*), Bifid Duct Pyrg (*Pyrgulopsis peculiaris*).

Previous Federal Actions

On February 17, 2009, we received a petition from the Center for Biological Diversity (the Center), the Freshwater Mollusk Conservation Society, Dr. James Deacon, and Don Duff requesting that 42 species of Great Basin springsnails from Nevada, Utah, and California be listed as endangered or threatened species under the Act. Three of those springsnail species were addressed in an August 18, 2009, 90-day finding (74 FR 41649). The remaining 39 springsnail species, which includes the 14 springsnails addressed in this 12-month finding, were addressed in a September 13, 2011, ''substantial'' 90-day finding (76 FR 56608).

On April 25, 2012, we received from the Center a notice of intent to file suit to compel us to issue 12-month findings for four of the 2009-petitioned species (*i.e.,* Hardy pyrg, flag pyrg, Lake Valley pyrg, and bifid duct pyrg). Subsequently, on September 13, 2012, the Center filed a complaint to compel us to issue findings for the four springsnails. On April 29, 2013, we reached a stipulated settlement agreement with the Center, agreeing to publish 12-month findings for the four species by September 30, 2017. This 12-month finding satisfies the requirements of that stipulated settlement agreement for Hardy pyrg, flag pyrg, Lake Valley pyrg, and bifid duct pyrg. A detailed discussion of the basis for these findings can be found in the Species Assessment Form and the SSA Report that we used in preparing this finding (see **ADDRESSES** above).

Background

All 14 of the species that this finding addresses fall within either the genus *Pyrgulopsis* or the genus *Tryonia.* To inexperienced and unaided eyes, species within each genus *Pyrgulopsis* and *Tryonia* appear relatively similar to one another, but have been collected, described, and differentiated based on subtle morphological characteristics using methods described by Hershler and Sada (1987, pp. 780–785) and Hershler (1989, pp. 176–179; 1994, pp. 2–4; 1998, pp. 3–11; 2001, p. 2). In general, species of *Pyrgulopsis* and *Tryonia* are similarly sized. The shell heights of adult *Pyrgulopsis* may range between approximately 1 and 5 mm

(0.04 and 0.2 in) and have 3 to 5 whorls (Hershler 1998, pp. 4–9), whereas shell heights of adult grated tryonia may be approximately 3 to 7 mm (0.1 to 0.3 in) and have between 5 to 9 whorls (Hershler 2001, p. 7).

The 14 springsnail species occur in a portion of the Great Basin, which is a contiguous watershed area of closed drainage basins that retain water and allow no outflow to other external bodies of water, such as rivers or oceans. The range and distribution of the 14 springsnail species within the Great Basin overlap 11 hydrographic basins (*i.e.,* drainage areas of streams) in Clark, Lincoln, Nye, and White Pine Counties, Nevada, and three hydrographic basins in Millard County, Utah.

Springsnails occur in springs, which are relatively small aquatic and riparian systems that flow onto the land surface through natural processes and are maintained by groundwater. They range widely in size, water chemistry, morphology, landscape setting, and persistence. They occur from mountain tops to valley floors, some of which occur in clusters known as spring provinces, and are predominantly isolated from other aquatic and riparian systems. Springs occur where subterranean water under pressure reaches the earth's surface through fault zones, rock cracks, or orifices that occur when water creates a passage by dissolving rock. Most springs are considered unique based on the province influences of aquifer geology, morphology, discharge rates, and regional precipitation (Sada and Pohlmann 2002, pp. 3–5). Details regarding the subject springs' size, water transport or flow system, and environmental characteristics (such as temperature, dissolved oxygen, and other water chemistry conditions) are described in the supporting SSA Report for these species (Service 2017, pp. 40–42).

The genetic diversity of springsnails is not well understood, particularly as it relates to their ability to adapt to short- and long-term environmental changes. Based on their restricted distributions within a springbrook (water outflow from a spring source), they seem to be limited to a range of physical and biological parameters that exist within that occupied area (Sada 2017, p. 13), one known parameter being their dependency on perennial water (Hershler and Liu 2008, p. 92). Overall, the best available information indicates that the 14 Nevada springsnails' physical and ecological needs include sufficient water quality, adequate substrate and vegetation, free-flowing water, and adequate spring discharge (Service 2017, pp. 42–45).

Summary of Status Review

These findings constitute our completion of our review of the petitioned action. However, we intend that any listing determination for the 14 Nevada springsnails be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning these findings.

A species status assessment (SSA) was completed for these species and summarized in an SSA Report (Service 2017). Below are summary discussions for each species, primarily focusing on impacts to species' needs within and among populations both currently and in the future. We focused on the overall condition of the species' needs here as they relate to a species' ability to withstand disturbances and stochastic events (resiliency), the distribution of populations across the landscape to withstand disturbances and stochastic events (redundancy), and the ability for each species to adapt to changing environmental conditions (representation). For detailed scientific information on current and potential future conditions of these species, including full discussions of resiliency, redundancy, and representation for each species, please see the SSA Report. As explained further in the SSA Report, for all of these springsnails we considered the foreseeable future to be 50 years because: (1) It is within the range of the available hydrological and climate change model forecasts; and (2) because of the short generation time of these springsnails (approximately 1 year), 50 years encompassed approximately 30 to 40 generations, which is a relatively high number of generations over which to observe effects to the species.

Spring Mountains Pyrg—The Spring Mountains pyrg has been reported to occur historically at a total of nine springs in the Spring Mountains area of Clark and Nye Counties, Nevada; however, subsequently its presence has been confirmed at only eight of the nine springs. Surveys at six of these locations indicate that the downstream extent and abundance of this species fluctuates during and between years. Populations of Spring Mountains pyrg have typically been abundant or common during surveys in recent years. A variety of stressors have been negatively affecting the springs both historically and currently, and individuals continue to occupy those seven springs at similar abundance levels (*i.e.,* scarce, common, or abundant) across its range as compared to past survey results. Stressors present include vegetation and soil disturbance from ungulate activity (all three springs at Horse Springs Province; Factor A) and recreation (Red Spring and Willow Spring; Factor A), potential crushing of individuals from ungulates and recreationists (all springs except Crystal Spring; Factor E), and residual impacts associated with historical spring modification (surface water diversion) (Kiup Spring and Horse Springs Province; Factor A). Although these stressors are present, they are not resulting in significant adverse effects to the Spring Mountains pyrg or its habitat. Projected future conditions include a possible decrease in spring discharge and insignificant impacts to substrate and vegetation. However, the populations of Spring Mountains pyrg continue to persist with an appropriate population size, growth rate, and occupied habitat, and the best available information does not indicate any reason why the expected condition of the springs and spring provinces within the species' range would not continue to meet the species' needs in the foreseeable future. We also looked for significant portions of the Spring Mountain pyrg's range that might be endangered or threatened, and we determined that there are no geographic concentration of stressors (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Corn Creek Pyrg—There are three populations of the Corn Creek pyrg that continue to occupy the entirety of its known historical range, including five spring source locations in Clark County, Nevada, which are within the Desert National Wildlife Refuge managed by the Service (Sada 2017, pp. 76–79). The relative abundance of Corn Creek pyrg has varied between sites and surveys. Residual impacts associated with historical spring modification (surface water diversion, channel modification, and impoundment) occur at Corn Creek Springs Province (Factor A). Additionally, there are insignificant residual impacts from beneficial habitat restoration (Factor A) at four of the five springs. Projected future conditions include a possible decrease in spring discharge, which is a result of future changing climate conditions in conjunction with a possible increase in groundwater withdrawal (although, if it occurs, this is not expected to be significant across the species' range). We project that, at a minimum, four

springs total (two populations) are likely to remain viable in the foreseeable future even with the potential stressor of ground water withdrawal effects, particularly given the significant protections and management afforded the springs due to their presence within the Desert National Wildlife Refuge both currently and into the future (the Species Assessment form describes in more detail our analysis of these protections). We also looked for significant portions of the Corn Creek pyrg's range that might be endangered or threatened, and we determined that there was a geographic concentration of stressors but that portion was not significant, and thus did not meet the criteria of an SPR (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Moapa Pebblesnail and Moapa Valley Pyrg—The Moapa pebblesnail and Moapa Valley pyrg are endemic springsnails that co-occur at 6 locations (springs and spring provinces, totaling 16 springs) in Clark County, Nevada, which is the entirety of their historical ranges. Their abundance and distribution vary temporally and in response to restoration (documented to be scarce to abundant over survey periods), and the best available data indicate that the populations for both species are stable. Moapa Valley pyrg typically appears more abundant than Moapa pebblesnail. The primary impacts are at one spring that is currently low-flow—Cardy Lamb Spring—which represents residual impacts from historical spring modifications (surface diversion, channel modification, and impoundment) (Factor A), as well as presence of invasive species (mosquitofish (*Gambusia affinis*) and red-rimmed melania (*Melanoides tuberculate*)) that may predate upon the species (Factor C) or compete with resource needs (Factor E) of the Moapa pebblesnail. Baldwin Spring also harbors invasive species (Factors C and E) and experiences residual impacts from historical spring modifications (surface diversion and channel modification) (Factor A). Additionally, residual historical impacts are evident to an insignificant degree from spring modifications and restoration (Factor A) at Apcar Springs Province, Pederson Springs Province, and Plummer Springs Province. The species' needs (adequate water quality and discharge, substrate and vegetation, and free-flowing water) are being met throughout its range, although water flow is low at one spring (Cardy Lamb). The best available data indicate that various stressors have been negatively affecting the springs both historically and currently, although it appears not to the degree that the entire populations have been affected over time. Overall, the likelihood that 5 of the 6 populations (15 springs) for each species will continue to persist with appropriate population sizes and growth rates appears high based on both species' demonstrated ability to persist with disturbances in the past, as well as the future expected conditions, and the best available information does not indicate any reason why the expected condition of the springs and spring provinces within the species' range would not continue to meet the species' needs in the foreseeable future. We also looked for significant portions of the Moapa pebblesnail and Moapa Valley pyrg ranges that might be endangered or threatened, and we determined that there was a geographic concentration of stressors but that portion was not significant, and thus did not meet the criteria of an SPR (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Grated Tryonia—The grated tryonia is an endemic springsnail that occurs in 5 springs and 6 spring provinces, totaling greater than 31 springs in Clark, Lincoln, and Nye Counties, Nevada: 3 springs exhibit common relative abundance, 6 exhibit scarce abundance (which historically is the most-frequent relative abundance value recorded across its range, suggesting the species' abundance is inherently scarce), and for 3 springs the presence of the species must be presumed because there was no access to the springs during the most-recent surveys in 2016. This occupied area is the entirety of its known historical range (multiple springs at multiple locations). The primary stressors are invasive species (Factors C and E) and residual impacts from spring modification and habitat restoration activities (Factor A), which have been negatively affecting the springs historically and currently to varying degrees. Invasive species occur at a greater abundance at Baldwin Spring and Ash Spring Province as compared to Cardy Lamb Spring, Moorman Spring, and Hot Creek Springs Province; however, invasive species do not occur in high numbers or densities such that population- or rangewide-level effects are evident. Residual impacts from historical spring modifications (surface diversions, channel modifications, or impoundments) or from past restoration activities are evident throughout the species' range, although surveys do not indicate that the activities have had significant impacts on the species across its range. Projected future conditions include a possible decrease in spring discharge that, if manifested, could result in the loss of the Cardy Lamb Spring population. However, the best available information indicates that there is a high likelihood that 10 of the 11 populations of grated tryonia will continue to persist in the foreseeable future with an appropriate population size and growth rate. We also looked for significant portions of the grated tryonia's range that might be endangered or threatened, and we determined that there are no geographic concentration of stressors (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Blue Point Pyrg—The Blue Point pyrg's range has always been limited to Blue Point Spring (Hershler 1998, p. 29), which is owned and managed by the National Park Service (Lake Mead National Recreation Area) in Clark County, Nevada. The species' abundance is known to vary over time: Scarce in the early 1990s, potentially extinct prior to 2001, rediscovered in 2006, common or abundant in 2012, scarce in 2014, common or abundant in 2015, and again common in 2017 (Service 2017, p. 137). The primary stressor for this species is aquatic invasive predation (Factor C), although other stressors that may negatively affect the species to a lesser degree are vegetation and substrate damage from ungulate use and roads (Factor A), as well as residual impacts from historical spring modification (Factor A). Although invasive species are the primary stressors for Blue Point pyrg, they do not occur in high numbers or densities such that population- or rangewide-level effects are evident. Overall, although stressors are present at Blue Point Spring, they do not appear to be resulting in significant adverse effects to Blue Point pyrg or its habitat (*i.e.,* the species' needs continue to be met, and there is no information to indicate declining population trends). Given the continued disturbance from some of these stressors, and the continued presence of the species at this spring, Blue Point pyrg appears resilient over the long term in the face of these impacts. The spring modification that occurred historically is not expected to be restored to its natural condition, although springsnails continue to persist now and are expected to persist

into the future, despite this surface modification. Additionally, the spring is expected to continue to experience an insignificant level of impacts from soil and vegetation disturbances. Even with both these residual, historical impacts and the potential addition of ground water withdrawal if it occurs, there is no evidence to suggest that these stressors are likely to increase in magnitude to such a degree that the population of Blue Point pyrg would be lost, or decline to a significant degree as a result in the foreseeable future. We also looked for significant portions of the Blue Point pyrg's range that might be endangered or threatened, and we determined that there are no geographic concentration of stressors (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Hubbs Pyrg—Hubbs pyrg has been reported from two spring areas on private land in Lincoln County, Nevada: Hiko Spring and Crystal Springs Province (two springs) (Service 2017, Figure 5.5; Hershler 1998, pp. 35–37; Sada 2017, pp. 80–81). The species is likely extirpated from Hiko Spring; in 2000, Sada (2017, p. 80) observed that the spring box was significantly modified, and the pyrg has not been observed since. Hubb's pyrg is presumed extant at Crystal Springs Province where it has been found to be common or abundant from surveys conducted between 1992 and 2015 (see Table 5.35 in the SSA Report (Service 2017, p. 140)). The best available information indicates that the primary stressor for this species is residual impacts associated with historical spring modifications (surface diversion, channel modification, and impoundment) (Factor A). It is reasonable to assume that some residual temporary negative impacts associated with historical spring modifications currently exist. However, there is no evidence to suggest that the Hubbs pyrg is not continuing to occupy Crystal Springs Province at similar abundance levels (*i.e.,* common or abundant) as recorded previously. Thus, although spring modifications still exist at Crystal Springs Province, the best available information indicates there are no significant adverse effects to Hubbs pyrg or its habitat (*i.e.,* the species' needs continue to be met, and there is no information to indicate declining population trends). Potential future changes in climate conditions (increases in temperature or decreases in precipitation) are not likely to cause significant impacts to the regional carbonate aquifer that Crystal Springs Province relies on. Although the species is now found in only one spring, we concluded in the Species Assessment Form that the resiliency of the species within that spring is sufficiently high that the species is not in danger of extinction or likely to become so in the foreseeable future. Therefore, at this time, there is no evidence to suggest that the stressors discussed herein are likely to increase in magnitude into the future to such a degree that the population of Hubbs pyrg would be lost, or decline to a significant degree as a result in the foreseeable future. We also looked for significant portions of the Hubbs pyrg's range that might be endangered or threatened, and we determined that there are no geographic concentrations of stressors (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Pahranagat Pebblesnail—This springsnail is consistently found to be common or abundant within four springs and spring provinces (greater than nine springs) in Lincoln and Nye Counties, Nevada. This area is the entirety of its known historical range. Although none of its springs are in natural condition or resemble natural characteristics, physical alteration of these habitats has all been historical, and the springs have naturalized to a stable condition. Relative abundance and springbrook data have varied by spring and year, although the most-recent survey information indicates it is currently abundant to common throughout its range. There are no stressors that are significantly affecting the species, although some presence of invasive species (Factor C) and residual impacts from historical spring modifications (Factor A) are likely resulting in insignificant effects. Although these stressors are present, they do not appear to be resulting in significant adverse effects to Pahranagat pebblesnail or its habitat (*i.e.,* the species' needs continue to be met at affected springs, and there is no information to indicate declining population trends across the species' range). Future conditions are projected to include the continued presence of invasive species. There is also potential for future decreased flow or ground water withdrawals across this species' range if climate change or pressures from oil or gas development occur; however, if any such reduction in flow or reduced substrate and vegetation conditions occur, impacts are predicted to be insignificant; thus, even if springsnail individuals may be impacted, the species' needs would still be met in the foreseeable future. We also looked for significant portions of the Pahranagat pebblesnail's range that might be endangered or threatened, and we determined that there are no geographic concentration of stressors (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

White River Valley pyrg—The White River Valley pyrg occurs in seven populations at nine springs or provinces in Nye and White Pine Counties, Nevada. Although some historical habitat was lost for this species, it currently occupies multiple springs at multiple locations throughout its known historical range. Two additional springs that could possibly contain the species have not been accessed since 1999 and 2007; there is no evidence to suggest that the species no longer occurs at those locations. The White River Valley pyrg in Flag Springs, Camp Spring, Lund Spring, and Preston Big Spring appears to be thriving. The primary stressor affecting the species is residual impacts from historical spring modifications (Factor A), primarily at Cold Spring and Nicholas Spring, although these residual impacts are also evident to a lesser degree at three other springs and one spring province. Although no significant effects were noted, invasive species (Factor C) occur at Preston Big Spring, and vegetation and substrate impacts (Factor A) from roads, ungulate use, and recreation were also evident at four springs.

The best available information indicates that the current stressors (spring modification, vegetation and soil disturbance from ungulates, invasive aquatic species) have existed historically across the species' range, resulting in a likelihood of some continued residual impacts to individuals or populations, but on a limited scale that does not affect the entire range of the species; no current impacts appear to exist at the Flag Springs Province (three springs). Thus, the best available information indicates that White River Valley pyrg continues to occupy multiple springs at abundance levels (common or abundant) similar to historical levels (albeit presumed occupancy for three of the populations). At this time, although stressors are present, they do not appear to be resulting in any significant adverse effects to White River Valley pyrg or its habitat (*i.e.,* the species' needs continue to be met at affected springs, and there is no information to indicate declining population trends across the species'

range). Four populations—Flag Springs Province, Camp Spring, Lund Spring, and Preston Big Spring—consisting of five to eight springs are likely to continue to provide for the species' needs into the foreseeable future. Existing stressors (*i.e.,* presumed invasive species (nonnative fish), vegetation and soil disturbance from roads, and historical spring modifications) are likely to continue but only to affect individuals of the species or to result in insignificant effects to populations. Additionally, abundance levels are expected to continue at this same status (abundant or common), having persisted over time regardless of the historical surface water diversions. We also looked for significant portions of the White River Valley pyrg's range that might be endangered or threatened, and we determined that there are no geographic concentrations of stressors (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Butterfield Pyrg—Butterfield pyrg occurs as two populations (likely five springs) at the Butterfield Springs Province in Nye County, Nevada, which is the likely historical range. Although two of the five springs could not be located during recent survey efforts, there is no evidence to suggest that the springs no longer exist. We determined that the species' needs are being met (or presumed to be met, noting additional surveys are necessary to locate two of the five spring sources). The primary stressors, although insignificant where they occur, are vegetation and soil disturbance from ungulate use (Factor A), invasive species (Factor C), and residual impacts from historical spring modifications (Factor A). The best available data indicate that residual impacts occur at the springs from past surface water diversions and disturbance of substrate and vegetation from ungulate activity, in addition to invasive plants present at two of the springs. Regardless of these historical and current impacts, the species was found to be both scarce and abundant (the latter at the largest spring in the province) at the three springs surveyed in 2016.

We are also unaware of any projects or activities occurring that would result in significant negative effects to the species' needs. Although there are stressors present, they are not resulting in significant adverse effects to Butterfield pyrg or its habitat (*i.e.,* the species' needs continue to be met at affected springs, and there is no information to indicate declining population trends across the species' range). It is likely that all populations will continue to persist into the future. The most probable impacts to the species' needs are potential reduced aquifer levels if climate change predictions (minimal increase in temperature and decrease in precipitation) come to fruition. If flow does decrease, it is not expected to affect the species' needs negatively to such a degree that springsnail abundance would decrease or springs would be lost in the foreseeable future. We also looked for significant portions of the Butterfield pyrg's range that might be endangered or threatened, and we determined that there was a geographic concentration of stressors; however, we found those stressors were not likely to cause the species in that portion to be in danger of extinction now or in the foreseeable future. Therefore, no portion of the Butterfield pyrg's range meets the criteria of an SPR (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Hardy Pyrg—The Hardy pyrg occurs in White River Valley, Nye County, Nevada. Although some historical habitat was lost for this species, it currently occupies multiple springs at multiple locations (8 populations within 24 springs) throughout its known historical range. The species' abundance in some springs varies, including recent surveys showing the species' abundance to range from none to common or abundant. The most common stressors across the range of the species include vegetation and soil disturbance from ungulate use (Factor A), as well as potential for crushed springsnails (seven populations; Factor E), and residual impacts from historical spring modifications (surface diversions, channel modifications, or impoundments at six populations; Factor A). Additionally, three populations are subject to vegetation and soil disturbance from roads (Factor A), and two also contain invasive species (Factor C). Although these stressors are present, they are not resulting in significant adverse effects to Hardy pyrg or its habitat (*i.e.,* the species' needs continue to be met at affected springs, and there is no information to indicate declining population trends across the species' range). A decrease in spring discharge in the future, if it occurs, may result in reduced Hardy pyrg population resiliency (possibly loss of the Ruppes Boghole Springs). Based on the current spring characteristics, stressors, and habitat conditions, we believe at least 6 populations (11 springs) would be able to withstand future stochastic events, regardless of the lowered resiliency. Overall, we expect habitat conditions may be reduced to some extent, but overall conditions will remain suitable for the Hardy pyrg in the foreseeable future. We also looked for significant portions of the Hardy pyrg's range that might be endangered or threatened, and we determined that there are no geographic concentrations of stressors (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Flag Pyrg—Flag pyrg occurs in two populations (four springs) in Nye County, Nevada: Meloy Spring and Flag Springs Province. Both of these areas represent the entirety of the species' known historical range. They both contain large populations that have historically and currently been classified as common or abundant (with the exception of Flag Spring C where none were found in 2016 (Service 2017, p. 190). Although this pyrg may be present in low numbers or absent at Flag Spring C, all remaining populations appear to be thriving. The overall condition of these four springs is high, with the only stressor known to affect these populations being residual impacts from historical spring modifications (surface diversions at both locations, and an impoundment at Meloy Spring) (Factor A). Although residual effects from this stressor are present, the spring modifications are not resulting in significant adverse effects to the Flag pyrg or its habitat (*i.e.,* the species' needs continue to be met at affected springs, and there is no information to indicate declining population trends across the species' range). There is potential for future reduced flow and possibly reduced substrate and vegetation conditions at both locations if climate change projections are realized; however, if any such reduction in flow or reduced substrate and vegetation conditions occur, impacts to this species are expected to be insignificant; even if springsnail individuals may be impacted, the species' needs would still be met. Because the springs have substantially high rates of free-flowing water, we expect habitat conditions may be reduced, but overall conditions are likely to remain suitable for the Flag pyrg in the foreseeable future. We also looked for significant portions of the Flag pyrg's range that might be endangered or threatened, and we determined that there are no geographic concentrations of stressors (see our

Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Lake Valley Pyrg—Although some historical habitat was lost for this species, Lake Valley pyrg currently occupies multiple springs at multiple locations throughout its known historical range. Specifically, Lake Valley pyrg is known from four springs at Wambolt Springs Province (Lake Valley, Lincoln County, Nevada), where it occurs as two populations. Surveys in 2009 found Lake Valley pyrg in three of the four springs surveyed—Wambolt Springs A, C, and D—which closely align in a meadow, whereas surveys in 2016 found the species in Wambolt Springs B, C, and D where Sada (2017, pp. 112–113) considered them abundant. With regards to stressors, spring modification (surface diversion; Factor A) and cattle disturbance to vegetation and substrate (Factor A) are evident. The Wambolt Springs Province has historically experienced some spring modifications and ungulate use that disturbs substrate and vegetation; ungulate use continues currently, although Lake Valley pyrg's relative abundance numbers do not appear significantly affected. At this time, although these stressors are present, they are not resulting in significant adverse effects to Lake Valley pyrg or its habitat (*i.e.,* the species' needs continue to be met at affected springs, and there is no information to indicate declining population trends across the species' range).

With regard to our future conditions analysis, the most probable impacts to the species' needs are associated with reduced aquifer levels if climate change predictions (minimal increase in temperature and decrease in precipitation) come to fruition, as well as with vegetation and soil disturbance from ungulate activity. Additionally, there are no proposed projects that are likely to impact the species or its habitat in the future. The greatest potential future impacts—ground water withdrawal or changes in climate conditions—may result in future reductions in spring discharge and free-flowing water; however, the best available information suggests that any realized negative effects would not result in significant population- or rangewide-level effects. In other words, Lake Valley pyrg's resiliency, redundancy, or representation is not likely to be reduced to a significant degree in the foreseeable future. We also looked for significant portions of the Lake Valley pyrg's range that might be endangered or threatened, and we determined that there are no geographic concentrations of stressors (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Bifid Duct Pyrg—The bifid duct pyrg occurs in White Pine County, Nevada, and Millard County, Utah. Although some historical habitat was lost for this species, it currently occupies a wide distribution within multiple springs at multiple locations throughout its known historical range (11 extant bifid duct pyrg populations in 18 springs), which can help protect the species against potential catastrophic events. Abundance varies across the species' range. During 2016 surveys, it was common or abundant in the majority of springs where it was found. It also appears that it consistently demonstrates relatively high abundance numbers in all but one of the 18 springs, and that the species has been both historically and currently scarce in the remaining spring. The most significant stressors across the species' range include residual impacts associated with historical spring modification (eight populations; Factor A), damaged substrate and vegetation from ungulate use (Factor A), the potential for crushed springsnails from ungulate use (Factor E), and, to a significantly lesser extent, potential vegetation and substrate impacts (Factor A) from roads (three springs) and recreation (three springs). Additionally, one spring (Maple Grove Springs) has invasive species (Factor C) present, although at insignificant abundance levels. The best available data indicate that there are no projects or activities occurring or proposed that would result in significant negative effects to the species' needs.

At this time, although these stressors are present, they are not resulting in significant adverse effects to bifid duct pyrg or its habitat (*i.e.,* the species' needs continue to be met at affected springs, and there is no information to indicate declining population trends across the species' range). A decrease in spring discharge, if it occurs in the future, may result in a reduction in resiliency for all populations of bifid duct pyrg. The degree to which reduction in discharge would affect resiliency would vary among populations, based on the current size of the population, the amount of flow at each spring site, the extent of habitat, and uncertainties associated with management on private land and proposed groundwater development projects. The best available information indicates that the bifid duct pyrg's resiliency, redundancy, or representation is not likely to be reduced to a significant degree in the foreseeable future. This conclusion is based on: (1) There are no proposed projects or negative changes in management practices expected in the foreseeable future, and (2) any future reduction in discharge or other species needs is not likely to be significant given the overall adequacy of current conditions (particularly spring discharge; see Service 2017, Table 6.13, p. 268) throughout the majority of the species' range such that springs or populations would be lost. We also looked for significant portions of the bifid duct pyrg's range that might be endangered or threatened, and we determined that there was a geographic concentration of stressors but that portion was not significant, and thus did not meet the criteria of an SPR (see our Species Assessment Form, Section 15.1.3 available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2011–0001).

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, as well as the number and distribution of springs and spring provinces for each of the 14 springsnail species, the continued presence of adequate resources to meet the species' needs, and our consideration of the species' continued redundancy, resiliency, and representation, we conclude that the impacts on the 14 species and their habitat are not of such imminence, intensity, or magnitude to indicate that any of the 14 springsnail species are in danger of extinction (an endangered species), or likely to become so within the foreseeable future (a threatened species), throughout all or a significant portion of their ranges. We conclude there is no evidence of any significant impacts to the species such that there is or would be in the foreseeable future a loss of the resources needed to meet the species' physical and ecological needs across all 14 of the species' ranges. Nor is there any evidence that there are any significant portions of the species' ranges where the species could be in danger of extinction or likely to become so in the foreseeable future. Thus, our future analysis reveals a low risk of extirpation in the foreseeable future for all 14 species.

Barbour's Map Turtle (*Graptemys barbouri*)

Previous Federal Actions

On April 20, 2010, we received a petition from the Center to list 404

aquatic, riparian, and wetland species from the southeastern United States as endangered or threatened species under the Act, including Barbour's map turtle. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836) concluding that the petition presented substantial information indicating that listing the Barbour's map turtle may be warranted. As a result of the Service's 2012 settlement agreement with the Center, the Service is required to submit a proposed listing rule or not-warranted 12-month finding for the Barbour's map turtle to the **Federal Register** by September 30, 2017. This notice satisfies the requirements of that settlement agreement for the Barbour's map turtle, and constitutes the Service's 12-month finding on the April 20, 2010, petition to list the Barbour's map turtle as an endangered or threatened species.

Background

The Barbour's map turtle is a freshwater riverine turtle found in the Apalachicola–Chattahoochee–Flint (ACF) Rivers and their major tributaries—Choctawhatchee, Pea, Ochlockonee, and Wacissa Rivers in southeastern Alabama, southwestern Georgia, and the Florida panhandle. Barbour's map turtles are mostly found in riverine habitats, although they may also be found in creeks, streams, and impoundments. These map turtles are historically known from the ACF River drainage (to include Chattahoochee, Flint, and Chipola Rivers) of southeastern Alabama, southwestern Georgia, and the Florida panhandle and some of their tributaries. Stream geomorphology in the ACF River basin is characterized by steep, sandy banks and Ocala limerock outcrops with alternating shallow, rocky shoals and deep, sandy pools. The abundance of Barbour's map turtles in the ACF River basin has led researchers to believe the limestone substrate and water depth are important elements of the species' habitat. Barbour's map turtles have recently been found outside the known historical range in the Wacissa and Ochlockonee Rivers in the Florida panhandle and the Choctawhatchee and Pea Rivers in Alabama and Florida panhandle.

Map turtles are avid baskers, basking up to 6 or more hours a day from March through October. In Florida and southern Alabama, map turtles will bask during every month of the year as long as the ambient temperature is above water temperature. In the northern portion of their range in Georgia and during cold spells throughout the region, turtles become lethargic in the cooler water temperatures but do not hibernate. Basking is required for thermoregulation, prevention and destruction of parasites and fungi that may grow on the carapace or skin, and exposure to ultraviolet radiation for absorption of vitamin D. Map turtles are easily startled and will dive into the water for protection.

River sinuosity, meaning the amount and type of curves and bends, plays an important part in providing habitat, shelter, and food for this species. The more bends and curves a river or creek has, the more riparian area that could be present to provide woody vegetation and snags for basking and sheltering, increased diversity of water depth and flow, more exposed open sandbars to provide advantageous nesting areas, and habitat for food sources consumed by all life stages of Barbour's map turtle.

Summary of Status Review

In completing the status review for the Barbour's map turtle, we considered and evaluated the best scientific and commercial information available, and evaluated the potential stressors that could be affecting the Barbour's map turtle, including the Act's five threat factors. This evaluation includes information from all sources, including Federal, State, tribal, academic, and private entities and the public. The Species Status Assessment Report (Service 2017b, entire) for the Barbour's map turtle summarizes and documents the biological information we assembled, reviewed, and analyzed as the basis for our finding. While the petition stated concerns regarding impacts to the species from stressors within the five factors, we concluded that the species is resilient to the stressors and current impacts to the species do not rise to a level that would warrant listing under the Act.

Our review of the best available science indicates that the Barbour's map turtle continues to occupy most of its historical range in the ACF River basin and additional locations beyond the historical range. Although the Barbour's map turtle faces a variety of impacts from reduced water flow from dams, fluctuating levels of water quality and habitat availability, dredging, and deadhead logging, the species has continued to persist and the magnitude of these threats is not expected to significantly change in the near future. Furthermore, the impacts from any of the stressors—either individually or cumulatively—are not likely to affect the species at a population- or range-wide level in the near term.

To evaluate the current and future viability of the Barbour's map turtle, we assessed a range of future conditions to allow us to consider the species' resiliency, redundancy, and representation. Resiliency describes the ability of a population to withstand stochastic disturbance effects. Redundancy describes the ability of the species to withstand catastrophic disturbance events. Representation characterizes a species' adaptive potential by assessing geographic, genetic, ecological, and niche variability. Together, resiliency, redundancy, and representation comprise the key characteristics that contribute to a species' ability to sustain populations in the wild over time.

A species with multiple resilient populations distributed across its range is more likely to persist into the future and avoid extinction than a species with fewer, less-resilient populations. For the purposes of this assessment, populations were delineated using HUC8 watersheds that Barbour's map turtles have historically occupied or currently occupy. The Barbour's map turtle currently occupies 16 HUC8 watersheds within the ACF River basin and the Choctawhatchee, Ochlockonee, and Wacissa River basins. Overall, estimates of current resiliency, representation, and redundancy for Barbour's map turtle are considered to be moderate to high, with the exception of the Upper Choctawhatchee River, and we did not find any evidence that these conditions may change in the future. Our estimation of the species' moderate to high resiliency, redundancy, and representation throughout the majority of its range suggest that it has the ability to sustain its populations into a 30-year time horizon. This timeframe captures the time period of 2–3 generations of Barbour's map turtles, as well as our best professional judgment of the projected future conditions related to either environmental stressors (*e.g.,* water management, deadhead logging, dredging or channel maintenance for commerce and public use of the waterways) or systematic changes (*e.g.,* climate change, riparian management or regulatory mechanisms, human consumption, and pet trade collection). We evaluated the current range of the Barbour's map turtle to determine if there are any apparent geographic concentrations of potential threats to the species. The risk factors that occur throughout the Barbour's map turtle's range include reduction of water flow from dams (Factor A), climate change (Factor A), deadhead logging (Factor A), dredging (Factor A), and human exploitation (Factor B). There was no concentration of threats identified

across its range. Therefore, there is no portion of the species' range where the species could be in danger of extinction or likely to become so in the foreseeable future, and the Barbour's map turtle is not in danger of extinction currently, nor is it likely to become so in the foreseeable future, in a significant portion of its range.

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, as well as the number and distribution of populations, the continued presence of adequate resources to meet the species' needs, and our consideration of the species' continued redundancy, resiliency, and representation, we conclude that the impacts on the species and its habitat are not of such imminence, intensity, or magnitude to indicate that the Barbour's map turtle is in danger of extinction (an endangered species), or likely to become so within the foreseeable future (a threatened species), throughout all or a significant portion of its range.

We conclude there is no evidence of any significant loss of the resources needed to meet the species' physical and ecological needs across the species' range, nor is there any evidence of declining numbers of turtles at any of the locations. Rather, recent surveys (1990s–2000s) have resulted in a larger species range than that which was previously known.

Therefore, we find that listing the Barbour's map turtle as a threatened or an endangered species or maintaining the species as a candidate is not warranted throughout all or a significant portion of its range. A detailed discussion of the basis for this finding can be found in the Barbour's map turtle species-specific assessment form and other supporting documents available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0065.

Bicknell's Thrush (*Catharus bicknelli*)

Previous Federal Actions

In 1994, the Bicknell's thrush was determined to be a category 2 species of concern and we announced that finding in the Animal Candidate Review for Listing as Endangered or Threatened Species (59 FR 58982, November 15, 1994). Category 2 was defined as including taxa for which the Service had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which persuasive data on biological vulnerability and threats were not currently available to support proposed rules. In 1996, the Service discontinued the list of category 2 candidate species, resulting in the removal of the Bicknell's thrush from candidate status (61 FR 64481, December 5, 1996).

On August 26, 2010, we received a petition dated August 24, 2010, from the Center, requesting that the Bicknell's thrush be listed as an endangered or threatened species under the Act and that critical habitat be designated. Included in the petition was supporting information regarding the species' natural history and ecology, population status, and threats to the species, including: Habitat loss and climate change (Factor A); disease and predation (Factor C); the inadequacy of existing regulatory mechanisms (Factor D); and exposure to mercury, acid deposition, interspecific competition, and disturbance by recreationists (Factor E).

On September 9, 2011, the U.S. District Court for the District of Columbia approved two settlement agreements: One agreement between the Service and the Center and a second agreement between the Service and WildEarth Guardians (Guardians). The agreements enabled the Service to systematically, over a period of 6 years, review and address the needs of more than 250 species listed on the 2010 Candidate Notice of Review (75 FR 69222, November 10, 2010). The agreements also included additional scheduling commitments for a small subset of the actions in the 6-year work plan that were consistent with the Service's objectives and biological priorities. For the Bicknell's thrush, the settlement agreement with Guardians specified that we would complete a 90-day petition finding by the end of fiscal year 2012. On August 15, 2012, we published a 90-day finding for the Bicknell's thrush (77 FR 48934) indicating that the petition provided substantial information indicating that listing the species because of Factors A, D, and E may be warranted, and initiated a status review.

In 2013, the Center filed a complaint against the Service for failure to complete a 12-month finding for the Bicknell's thrush within the statutory timeframe. The Service entered into a settlement agreement with the Center to address the complaint; the court-approved settlement agreement specified a 12-month finding for the Bicknell's thrush would be delivered to the **Federal Register** by September 30, 2017. This notice constitutes the 12-month finding on the August 26, 2010, petition to list the Bicknell's thrush as an endangered or threatened species.

Background

This information is summarized from the Service's Bicknell's Thrush Biological Species Report (Species Report) (Service 2017c, entire); for more detail, please see the Bicknell's Thrush Species Report available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2012–0056. The Bicknell's thrush is a migratory bird: The smallest of North American *Catharus* thrushes in the family Turdidae, which includes all birds related to the robins. Due to similar morphometric (related to size and shape) characteristics, positively identifying a Bicknell's thrush from other North American *Catharus* thrushes, especially the gray-cheeked thrush (*C. minimus*), requires close scrutiny. However, trained biologists can tell similar species apart. We have carefully reviewed the available taxonomic information and conclude that the Bicknell's thrush (*Catharus bicknelli*) is a valid taxonomic species.

The Bicknell's thrush breeds during the summer (May to August) in areas of the northeastern United States and southeastern Canada. Individuals start migrating in late September or early October by following a coastal route south to Virginia, where most birds depart, flying across the ocean to the Bahamas and Cuba, before finally arriving in the Greater Antilles (*i.e.,* the grouping of larger islands in the Caribbean, including but not limited to the Bicknell's thrush's wintering areas in Cuba, Haiti, the Dominican Republic, Jamaica, and Puerto Rico) sometime during mid-October through early November. Wintering occurs in the Greater Antilles (October to March), and migration occurs back overland through the Southeast United States in spring (April to May) to reach its breeding grounds.

Breeding habitat for the Bicknell's thrush consists of dense tangles of both living and dead ''stunted'' trees that are predominately balsam fir (*Abies balsamea*) with lesser amounts of red spruce (*Picea rubens*) and white birch (*Betula papyrifera var. cordifolia*) (Wallace 1939, p. 285; Ouellet 1993, p. 561; Rimmer *et al.* 2001, p. 7; McKinnon *et al.* 2014, p. 2). Except in the case of the Canadian provinces, where the species has been found at lower elevations along the coast and in regenerating industrial forests at higher elevations, the species breeds mostly in stunted high-elevation or montane spruce-fir forests located close to, but below, timberline (*i.e.,* at elevations

above 700 m (2,300 ft)) (Wallace 1939, pp. 248, 286; Ouellet 1993, pp. 560, 561; Atwood *et al.* 1996, p. 652; Nixon *et al.* 2001, p. 38; Rimmer *et al.* 2001, p. 7; Glennon and Seewagen 2016, p. 134; Aubry *et al.* 2016, p. 304). Although the Bicknell's thrush exhibits some flexibility in the elevation of its breeding habitats, the species demonstrates a strong preference for a specific, dense vegetation structure.

While there is more suitable breeding habitat in Canada than in the United States, the species is not evenly distributed throughout the habitat. Based on breeding density information, the best available data indicate that the current Bicknell's thrush global population is approximately 97,358 to 139,477, with approximately 66 percent of the population breeding in the United States and 33 percent breeding in Canada.

During migration, the Bicknell's thrush appears to be a habitat generalist and can be found in dense woodlots composed of variable tree species, or along well-vegetated beaches, orchards, and gardens (Wallace 1939, p. 259; Wilson and Watts 1997, pp. 520–521). Wintering occurs exclusively in the Greater Antilles, with the majority of Bicknell's thrushes on the island of Hispaniola, in Haiti and the Dominican Republic; however, the species can also be found on the islands of Cuba, Jamaica, and Puerto Rico (Rimmer *et al.* 2001, pp. 3–4). In Jamaica, the Bicknell's thrush is considered ''extremely rare'' and observed in old growth forests (Strong in litt. 2016). The species' information for Puerto Rico is scant (Rivera in litt. 2017), with surveys conducted in the winter of 2015 and 2016 finding a total of 10 birds (Rimmer 2016, entire). In the Dominican Republic, where the majority of wintering information about the species is derived, the Bicknell's thrush can be found from sea level to 2,200 m (7,200 ft), although most occur in moderately wet to wet broadleaf montane forests above 1,000 m (3,300 ft) elevation (*i.e.,* cloud forest) (Rimmer *et al.* 2001, p. 8). The Bicknell's thrush can also be found in dry pine-dominated forests at lower elevations (Rimmer *et al.* 2001, p. 6). The species prefers wintering in dense thicket vegetation (Townsend *et al.* 2010, p. 520), similar to the habitat structure selected during the breeding season.

Summary of Status Review

This information is summarized from the Species Report (Service 2017c, entire); for more detail, please see the report. Due to the lack of specific data regarding survival rates by life stage or fecundity rates, we evaluated existing stressor-related data and qualitatively assessed the individual and cumulative effects of those stressors on individual Bicknell's thrush, aggregates of Bicknell's thrush in the breeding or wintering grounds, and at the species level. From this assessment, we conclude that habitat loss in the wintering range has most likely been a significant driver of the species' decreased viability, particularly when combined with low productivity in some years due to nest predation from red squirrels (*Sciurus vulgaris*), which also contributes to annual variation in the abundance of the Bicknell's thrush.

Activities that contribute to loss of the species' habitat include some forestry practices such as precommercial thinning and clearcutting in the Canadian portion of the species' range, which may result in the loss and fragmentation of important breeding habitat. However, the regeneration of young dense stands of conifers that follows cutting can provide breeding habitat for the species for approximately 5 to 12 years after clearcutting (International Bicknell's Thrush Conservation Group 2010, p. 12; McKinnon et al 2014, pp. 264, 268). The development of ski areas, wind turbines, telecommunication facilities, and their associated infrastructure (*i.e.,* roads and transmission lines) has also resulted in the loss and fragmentation of Bicknell's thrush habitat (International Bicknell's Thrush Conservation Group 2010, p. 12), but these activities have affected a relatively small proportion of the available Bicknell's thrush breeding habitat and associated individuals.

Looking forward, the best available information suggests that, as a result of climate change, the spruce-fir habitat that supports breeding Bicknell's thrushes may be substantially reduced, with the potential to be nearly eliminated, from the species' current range in the northeastern United States and may decline in Canada by the end of this century, depending on the amount of greenhouse gases emitted to the atmosphere, habitat type (*i.e.,* low vs. high elevation), and forest harvest management strategies. The effects of climate change may also result in an increase in competition between the Bicknell's and Swainson's thrushes (*Catharus ustulatus*), at the expense of the Bicknell's thrush, and an increase in predation from red squirrels.

On the wintering grounds, the consequences of climate change will likely include a drying of the Caribbean region and an associated decline in the wet montane and cloud forest habitats where most Bicknell's thrushes are found. It is also likely that socioeconomic and development pressures, especially in the Dominican Republic and Haiti, will result in further losses of the species' preferred habitat, as forests are converted to other land uses.

The stressors we evaluated in detail in our Bicknell's Thrush Report (Service 2017c, entire) that fall under Factors A, C, and E of section 4(a)(1) of the Act are habitat loss and degradation due to incompatible forestry practices (*e.g.,* precommercial thinning), conversion to agriculture, atmospheric acid and nitrogen deposition, recreational and wind energy development, and the effects of climate change (Factor A); predation from red squirrels and Norway rats (*Rattus norvegicus*) (Factor C); and effects of mercury, effects of acid deposition, collision and disturbance by stationary and moving structures, disturbance by recreationalists, and competition with Swainson's thrush (Factor E). An examination of existing regulatory mechanisms (Factor D) for both the Bicknell's thrush and its habitat in general reveals that some mechanisms exist that may provide a conservation benefit to the species. Where relevant, the adequacy of those mechanisms is discussed in context in the relevant sections of the Species Report.

We have no information indicating that habitat degradation due to atmospheric acid and nitrogen deposition (Factor A), disease (Factor C), or the effects of mercury and acid deposition (Factor E) are currently affecting the Bicknell's thrush or its habitat. In addition, we concluded that recreational and wind energy development (Factor A), as well as collision and disturbance by stationary/moving structures and disturbance by recreationalists (Factor E) may be affecting individual Bicknell's thrush but were not significant stressors to aggregates of individuals or at the species level.

Our review of the best available information indicates that the Bicknell's thrush continues to occupy most of its historical breeding, migration, and wintering range. Although there are some stressors that are expected to result in the loss of suitable breeding and wintering habitat for the Bicknell's thrush, as well as directly affect the species through reduced reproduction and overwintering mortality, we have no evidence to suggest that the species is currently at risk of extinction; in other words, the risk of the Bicknell's thrush significantly declining in the near term is very low given that it has persisted despite historical levels of habitat loss

and predation throughout its range. Furthermore, neither the loss of wintering habitat nor predation levels nor any other stressors, either individually or cumulatively, are likely to cause species-level effects such that the species is currently at risk of extinction; thus the Bicknell's thrush does not meet the definition of an endangered species.

The stressors likely to have the greatest influence on the Bicknell's thrush's viability over time include: (1) For the breeding range, changes in habitat suitability (*e.g.,* changes in tree species composition, forest pests, and fire regime), increased red squirrel predation, and increased interspecific competition due to the effects of climate change; and (2) for the wintering range, direct habitat loss due to agriculture conversion and the effects of climate change. We considered whether we could reliably predict the extent to which these stressors might affect the status of the species in the future. Our ability to make reliable predictions into the future for the Bicknell's thrush is limited by the variability in not only the quantity and quality of available data across the species' range regarding the species' occurrence and the potential impacts to the species from ongoing and predicted stressors, but also by the high amount of uncertainty in how the Bicknell's thrush may respond to those effects.

The future timeframe for this analysis is approximately 30 years, which is a reasonably long time to consider as the foreseeable future given the Bicknell's thrush's life history and the temporal scale associated with the patterns of the past and current stressors outlined in the best available information. For example, the foreseeable future is twice as long as the 15-year data set (from 2001 to 2014) showing the extent of decline in tree cover on four Caribbean islands occupied by wintering Bicknell's thrushes (Hansen *et al.* 2017, entire). This timeframe also captures the range of time periods for continued habitat loss in the wintering range as a result of incompatible forestry practices and conversion to agricultural lands (*i.e.,* using the previous 15 years of data to project the same rate of the decline over the next 15 to 30 years), climate models, as well as our best professional judgment of the reliability of data on, and the projected range of future conditions related to the effects, including cumulative effects, of climate change (*i.e.,* the period in which there is reliable data upon which to base a prediction of the species' response to the potential effects of climate change).

Since the analysis of potential effects from climate change was an important consideration in our status assessment and the effects of climate change take place over a period of time, we sought to consider a timeframe that was long enough to evaluate those potential effects adequately. However, in evaluating the status of the species, we did not extend our forecast out as far as all existing climate change models discussed in the Bicknell's Thrush Report. Those models extend to approximately 100 years, and we concluded that such an extended forecast was not sufficiently reliable for the listing determination due to the: (1) Increased uncertainty in the model results (*i.e.,* the confidence intervals associated with temperature and precipitation projections); (2) increasing uncertainty in the magnitude and imminence of the predicted changes; (3) higher level of uncertainty of how the species may respond to any potential changes in its habitat that may result from changes in temperature and precipitation patterns; and (4) uncertainty associated with how society will respond to the predicted change in climate (*e.g.,* take actions that will mediate or accelerate global emissions) that far into the future. As an example of biological uncertainty, there are significant questions regarding the point at which the predicted shifts (*i.e.,* tree species composition, interspecific competition with Swainson's thrush) make the habitat unsuitable for the Bicknell's thrush, as well as the extent to which the Bicknell's thrush has the adaptive capacity to use any changes in what we now understand to be suitable habitat or to find other habitat to be suitable. These uncertainties are additive and undermine the Service's confidence in making a risk assessment projection beyond 30 years into the future. Therefore, the Service concluded that an approximate 30-year projection of threats and effects to the species represents the timeframe in which a reliable prediction is possible.

Based on the species' abundance and distribution in its breeding and wintering locations, the continued presence of adequate habitat quality and quantity to meet the species' breeding and overwintering needs, and our consideration of the species' future distribution, abundance, and diversity, we conclude that the Bicknell's thrush is likely to remain at a sufficiently low risk of extinction that it will not become in danger of extinction in the foreseeable future (*i.e.,* approximately 30 years) and thus does not meet the definition of a threatened species under the Act.

We evaluated the current range of the Bicknell's thrush to determine if there are any apparent geographic concentrations of potential threats to the species. The risk factors that occur throughout the Bicknell's thrush's range include the loss of habitat due to the effects of climate change. The loss of habitat due to illegal logging, conversion to subsistence farming, and slash and burn agriculture, however, is occurring both currently and in the foreseeable future, at a rate of approximately 5 percent reduction in tree cover over 15 years (based on Hansen *et al.'s* (2017, entire) analysis), solely in the Dominican Republic and Haiti. Thus, this one area of the species' wintering range is subject to a type of habitat loss that is not affecting the species uniformly throughout its range. While the human-mediated loss of suitable habitat in the wintering grounds appears to be concentrated in areas within the Dominican Republic and Haiti, the risk is low that the current rate of loss that we project to continue, is sufficient to cause the Bicknell's thrush to be in danger of extinction (*i.e.,* be an endangered species) or likely to cause the species to become endangered within the foreseeable future period of approximately 30 years (*i.e.,* be a threatened species) in a portion of its range.

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the Bicknell's thrush is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. We request that you submit any new information concerning the status of, or threats to, the Bicknell's thrush to our New England Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available.

Big Blue Springs Cave Crayfish (*Procambarus horsti*)

Previous Federal Actions

On April 20, 2010, we received a petition from the Center to list 404 aquatic, riparian, and wetland species from the southeastern United States as threatened or endangered species under the Act, including the Big Blue Springs cave crayfish. The 90-day finding was

published on September 27, 2011; it determined that the petition contained substantial information indicating the species may warrant listing, and initiated a status review (76 FR 59836). As a result of the Service's 2012, settlement agreement with the Center, the Service is required to submit a 12-month finding to the **Federal Register** by September 30, 2017. This notice satisfies the requirements of that settlement agreement for the Big Blue Springs cave crayfish, and constitutes the Service's 12-month finding on the April 20, 2010, petition to list the Big Blue Springs cave crayfish as an endangered or threatened species.

Background

The Big Blue Springs cave crayfish is a subterranean species of crayfish endemic to several freshwater springs and sink caves within the panhandle of Florida. It has been collected from aquatic caves and limestone springs associated with the Woodville Karst Plain near and south of a geomorphological feature of karst limestone known as the Cody Scarp, paralleling riverine karst areas of the Wakulla, St. Marks, and Wacissa Rivers in Jefferson, Leon, and Wakulla Counties, Florida. It has been found in the boil area of springs, depths of 21–26 m (70–80 ft), and a sinkhole near the surface. The principal habitat feature supporting this species appears to be a flowing, freshwater, subterranean environment; however, specific water-quality requirements for the species are currently unknown.

The Big Blue Springs cave crayfish was historically found in three locations: A well in Leon County, Big Blue Spring in Jefferson County, and Shepherd Spring on St. Marks National Wildlife Refuge in Wakulla County, Florida. In 2017, the species was found in three aquatic cave sites within 12 mi (19 km) of each other—Big Blue Spring and nearby Garner Spring on the east side of the Wacissa River (Jefferson County) and Horsehead Spring on the west side of the Wacissa River (Jefferson County)—which included locations where the species had not previously been found.

Summary of Status Review

In completing our status review for the Big Blue Springs cave crayfish, we reviewed the best available scientific and commercial information and compiled the information in the Species Status Assessment Report (Service 2017d, entire) for the Big Blue Springs cave crayfish. We evaluated all known potential impacts to the Big Blue Springs cave crayfish, including the Act's five threat factors. As explained further below, we also used a time period of 35–50 years for the foreseeable future. This evaluation included information from all sources, including Federal, State, tribal, academic, and private entities and the public.

The Big Blue Springs cave crayfish were recently (March 2017) observed in two of three historical locations. No population estimates exist for the species; however, at least 90 individuals were observed across three locations during the 2017 surveys. The primary stressors to the Big Blue Springs cave crayfish currently and into the future are loss of freshwater within the karst system and saltwater intrusion.

The petition stated that the species is at risk from present or future destruction, modification, or curtailment of its range by extensive degradation of aquatic and riparian habitats due to land-use activities and the direct alterations of waterways. In addition, populations are prone to potential pollution and detrital change, and there is concern that the aquifer system may be receiving pollutants from the Tallahassee area. We also evaluated the extent to which overutilization and climate change (including saltwater intrusion resulting from sea-level rise) may be affecting the species negatively.

Land Use Activities and Direct Alteration of Waterways: In general, crayfish species experience degradation of aquatic and riparian habitats in the Southeast due to land-use activities—such as development, agriculture, logging, and mining—and direct alterations of waterways—such as impoundment, diversion, dredging and channelization, and draining of wetlands (Benz and Collins 1997, p. 273; Shute *et al.* 1997, pp. 445–446). However, information on whether these activities represent actual or active threats to the Big Blue Springs cave crayfish is inconclusive.

Population Increases and Water Pollution: According to the U.S. Census Bureau, the human population in the southeastern United States has grown at an average annual rate of 37.9 percent since 2000 (U.S. Census Bureau 2017, pp. 1–4), by far the most rapidly growing region in the country. This rapid growth has resulted in expanding urbanization, sometimes referred to as ''urban sprawl.'' Urban sprawl increases the connectivity of urban habitats while simultaneously fragmenting non-urban habitats such as forests and grasslands (Terando *et al.* 2014, p. 1). In turn, species and ecosystems are negatively affected by the increased sprawl because of water pollution, local climate conditions, and disturbance dynamics (Terando *et al.* 2014, p. 1).

Population projections for Leon County, Florida, are expected to increase, leading to potential ground water impacts associated with greater water demands for the city of Tallahassee. However, the Northwest Florida Water Management District indicated that ground water pumping was not an issue in the watershed; more freshwater is staying in the system due to improvements in storm water and stream flow management. This is based on observed increases in discharge that could be related to the release of water from underground stream openings and sinks connected to the regional karst system (Coates 2017, pers. comm.). With more freshwater staying in the system due to improvements in storm water and stream flow management, we concluded that the best available scientific and commercial information does not indicate that ground water changes are having a negative impact on the species at a population level.

Overutilization: The petition also discussed the potential threat of overutilization of crayfish from collection for bait or food; however, the freshwater cave habitat for this species is difficult to access, which offers the crayfish some protection from collection. This threat is not causing population- or species-level impacts; therefore, the best available information does not indicate overutilization is an operative threat to this species.

Climate Change: Our analyses under the Act include consideration of ongoing and projected changes in climate. Various types of changes in climate can have direct or indirect effects on the species. These effects may be positive, neutral, or negative and they may change over time. In our analyses, we use the best available scientific and commercial data and modeling available and our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

One impact from climate change that may be a factor for the Big Blue Springs cave crayfish is sea-level rise due to its proximity to the Gulf coast of Florida. Annual rates of sea-level rise at Apalachicola, Florida (southwest of areas inhabited by Big Blue Springs cave crayfish) have averaged approximately 1.96 mm (0.08 in) since the 1970s (National Oceanic and Atmospheric Administration 2017). The projected sea-level rise for coastal Wakulla County in 2080 is 0.32 m (1.05 ft) (Harrington and Walton 2008, p. 12). Sea-level rise may result in an increase in saltwater

intrusion into the karst freshwater aquifer system as a result of associated increases in hydraulic pressure on the aquifer; however, the mechanics of the coastal aquifer system are complex and dynamic. Generally, seawater is kept out of the conduit system by freshwater hydraulic pressure resisting against seawater intrusion (Werner and Simmons 2009, pp. 197–198). However, Xu *et al.* (2016, p. 2) documented seawater intrusion into the Woodville Karst Plain conduit network during periods of low precipitation. Their analysis of precipitation and electrical conductivity data indicates that seawater intrusion into the karst system does occur, traveling 11 mi (18 km) against the prevailing regional hydraulic gradient to Wakulla Spring (Xu *et al.* 2016, p. 2).

This increase in seawater intrusion into the karst conduit system may be contributing to the increased freshwater discharge rates periodically observed in some springs (*e.g.,* Wakulla Springs) in recent years. Sea-level rise would result in increased hydraulic pressure and, therefore, the potential for increased saltwater intrusion into the conduit system. However, we are unable to conclude that the current predicted rates of sea-level rise will significantly affect the cave crayfish's habitat within the foreseeable future. First, the species is able to move vertically within spring systems and can quickly adapt to changes in the availability of freshwater within the conduit system (Moler 2016, pers. comm.). Saltwater is also denser than freshwater and, therefore, descends as it intrudes inland through the aquifer, reducing the likelihood that it will affect the availability of freshwater in the conduit system as distance from the ocean increases. The flow of seawater from the Gulf of Mexico interacts with the force of a seaward hydraulic pressure of freshwater creating a diffusion zone at the freshwater–saltwater interface (Zhang *et al.* 2002, p. 233). This interface is a dynamic zone that is dictated by the flow of the water in each direction; further inland, there is less pressure from the introduced seawater and more pressure from the freshwater system flowing into the ocean.

Finally, habitats occupied by the Big Blue Springs cave crayfish are located 3 to 43 km (2 to 27 mi) from the coast, at elevations of 1.5 to 15 m (5 to 50 ft) above sea level, though occupied habitats within the conduit system are below sea level. Although seawater intrusion and transport in karst aquifers can occur over extremely long distances, increases in conductivity noted at the vent of Wakulla Spring are small in an absolute sense. An increase in conductivity is indicative of saltwater intrusion inland (Xu *et al.* 2016, p. 9). Conductivity would likely be similar or less at the two furthest sites occupied by Big Blue Springs cave crayfish (Big Blue Spring and Garner Spring). Seawater intrusion could be a more important issue at Shepherd Spring, which is located within 3 km (2 mi) of the Gulf of Mexico.

Overall, based on historical data along with current and future conditions of the species and habitat, we anticipate that Big Blue Springs cave crayfish populations will remain resilient. The locations where the crayfish have been observed at the surface can be thought of as ''windows'' into the karst system. The species has the ability to move throughout the system in response to environmental conditions in order to relocate to suitable habitat or areas of refugia. The species is expected to continue to be resilient in response to stochastic events. A survey from March 2017 detected the species in areas where they hadn't previously been detected, and many individuals were found in Garner Springs, indicating that the species is persisting there. Management actions on public lands can provide protection and improvement for springs. Portions of the Aucilla Wildlife Management Area are designated as Outstanding Florida Waters by the Florida Department of Environmental Protection; such a designation restricts degradation of water quality and water withdrawal (Florida Fish and Wildlife Conservation Commission 2016, p. 57). As explained further in the Species Assessment Form, we evaluated ongoing management of the springs within the range of the Big Blue Springs cave crayfish will reduce impacts to the species by maintaining water flow to the springs thus allowing the persistence of suitable habitat.

Foreseeable future for this species was determined to be a 35–50-year timeframe based on the biology of the species, the threats identified, and ongoing water management practices that include actions that are beneficial to the species, with the 50-year outer limit as the conservative amount of time to apply when evaluating its status as threatened. The lifespan of cave crayfish is typically around 20 years, so the range of 35–50 years encompasses 2–3 generations, allowing sufficient time for population response to stressors to be detected, with the major stressor to the species being a decline or loss of freshwater availability. The climate model used included projections beyond 50 years; however, a longer timeframe would lead to too much uncertainty in evaluating the response of the species to habitat changes or the impacts from sea-level rise, drought, or overall water availability.

We evaluated the current range of the Big Blue Springs cave crayfish to determine if there are any apparent geographic concentrations of potential threats to the species. There was no concentration of threats identified across its range. Therefore, we find there could be no significant portion of the species' range where the species is in danger of extinction or likely to become so in the foreseeable future. Therefore, we find that the Big Blue Springs cave crayfish is not endangered or threatened throughout a significant portion of its range.

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we evaluated relevant stressors, including land-use activities and direct alterations of waterways (Factor A), water withdrawal (Factor A), sea-level rise (Factor A), and overutilization (Factor B), and concluded that the stressors acting on the species and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the Big Blue Springs cave crayfish is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all or a significant portion of its range.

The most important factor that may affect Big Blue Springs cave crayfish resiliency is ground water decline. We expect that ground water levels may decline over time, but there is significant uncertainty over how that will affect freshwater availability. If freshwater availability is reduced due to lower aquifer levels caused by ground water pumping or prolonged drought, we expect populations would likely be minimally affected, since the species has been found at significant spring and sink depths and can move as ground water levels decrease (Moler 2016, pers. comm.).

A detailed discussion of the basis for this finding can be found in the Big Blue Springs cave crayfish species-specific assessment form and other supporting documents available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0066.

Black-Backed Woodpecker (*Picoides arcticus*)

Previous Federal Actions

On May 8, 2012, we received a petition dated May 2, 2012, from the John Muir Project of the Earth Island Institute, the Center for Biological Diversity, the Blue Mountains Biodiversity Project, and the Biodiversity Conservation Alliance (Earth Island Institute *et al.* 2012, pp. 1–16) (petitioners), requesting that the Oregon-Cascades/California population and the Black Hills population of the black-backed woodpecker each be listed as an endangered or threatened subspecies, and that critical habitat be designated concurrent with listing under the Act. The petition also requested that, should we not recognize either population as a subspecies, we consider listing each population as an endangered or threatened distinct population segment (DPS) under our policy published in the **Federal Register** for determining distinct vertebrate population segments under the Act (61 FR 4721; February 7, 1996). Included in the petition was information regarding the species' ecology, genetic sampling information, distribution, present status, and suggested actual and potential causes of decline. Our positive 90-day finding for the petition was published in the **Federal Register** on April 9, 2013 (78 FR 21086).

On September 24, 2014, the United States District Court for the District of Columbia issued a court order for a stipulated settlement agreement in the case of *Center for Biological Diversity* v. *S.M.R. Jewell,* No.1: 14–cv–0 1021–EGS. The order and stipulated settlement agreement required the Service to complete a 12-month finding for the ''California-Oregon and South Dakota populations'' of the black-backed woodpecker by September 30, 2017. This notice constitutes the 12-month finding on the May 2, 2012, petition to list the Oregon-Cascades/California population and Black Hills population as endangered or threatened species under the Act.

Background

The black-backed woodpecker is similar in size to the more-common American robin (*Turdus migratorius*) and is heavily barred with black and white sides (Dawson 1923, pp. 1007–1008). Males and young have a yellow crown patch, while the female crown is entirely black. Its sooty-black dorsal plumage camouflages it against the black, charred bark of the burned trees upon which it preferentially forages (Murphy and Lehnhausen 1998, p. 1366; Tremblay *et al.* 2016, p. 1). The black-backed woodpecker has only three toes on each foot instead of the usual four. Black-backed woodpeckers have a narrow diet, consisting mainly of larvae of wood-boring beetles and bark beetles (Cerambycidae, Buprestidae, Tenebrionidae, and Scolytidae) (Goggans *et al.* 1989, pp. 20, 34; Villard and Beninger 1993, p. 73; Murphy and Lehnhausen 1998, pp. 1366–1367; Powell 2000, p. 31; Dudley and Saab 2007, p. 593), which are available following large-scale disturbances, especially high-severity fire (Nappi and Drapeau 2009, p. 1382). The black-backed woodpecker is a cavity-nesting bird. It nests in late spring, with nest excavation generally occurring from April to June, depending on location and year.

The black-backed woodpecker occurs across dense, closed-canopy boreal and montane coniferous forests of North America from Alaska, Canada, Washington, Oregon, California, Northern Rockies, South Dakota, Minnesota and east to New England (Winkler *et al.* 1995, p. 296; Tremblay *et al.* 2016, pp. 10–11). This includes the Black Hills of western South Dakota (Drilling *et al.* 2016, pp. 251–252) and adjacent counties of northeastern Wyoming (Orabona *et al.* 2012, p. 76). It also includes the area of eastern Washington and Oregon where the species is found in the Cascade Range, south through throughout the Blue Mountains and Wallowa Mountains and into the Siskiyou Mountains in southwestern Oregon. From Oregon, the range continues south into California along the higher elevation slopes of the Siskiyou, Cascades, Klamath, and Sierra Nevada Mountains to eastern Tulare County, California (Dawson 1923, p. 1007; Grinnell and Miller 1944, p. 248; Tremblay *et al.* 2016, pp. 10–11). The black-backed woodpecker's breeding range generally corresponds with the location of boreal and montane coniferous forests throughout its range.

At the landscape scale, while not tied to any particular tree species, the black-backed woodpecker generally is found in older conifer forests that comprise high densities of larger snags (Bock and Bock 1973, p. 400; Russell *et al.* 2007, p. 2604; Nappi and Drapeau 2009, p. 1388; Siegel *et al.* 2012, pp. 34–42). The species is closely associated with standing dead timber that contains an abundance of snags (Tremblay *et al.* 2016, pp. 13–16). Black-backed woodpeckers appear to be most abundant in stands of trees recently killed by fire (Hutto 1995, pp. 1047, 1050; Smucker *et al.* 2005, pp. 1540–1543) and in areas where beetle infestations have resulted in high tree mortality (Bonnot *et al.* 2009, p. 220).

The black-backed woodpecker was first described in 1831 (Swainson and Richardson 1831, p. 313; American Ornithologists' Union (AOU) 1983, p. 392). The scientific community recognizes the black-backed woodpecker as a valid species (AOU 1983, pp. 392–393), and no subspecies of the black-backed woodpecker were included at the time that AOU, the scientific authority responsible for bird classification, last published subspecies classifications in 1957 (AOU 1957, p. 330). In addition, no other taxonomic authority has recognized any subspecies for the black-backed woodpecker (Tremblay *et al.* 2016, p. 9).

Summary of Status Review

A recent genetic study identified some genetic differences between individuals found in three areas within the black-backed woodpecker's range. The three areas include: (1) The boreal forest of Canada, Washington, Northern Rockies, and northeastern United States, (2) the Oregon-Cascades/California (Sierra Nevada Mountains), and (3) the area around the Black Hills (southwestern South Dakota and northeastern Wyoming) (Pierson *et al.* 2010, entire; Pierson *et al.* 2013, entire). The petitioners have relied on the Pierson *et al.* (2010) study results to propose that this new genetic information may warrant a revised interpretation of the taxonomic description of the species into three subspecies (EII *et al.* 2012, pp. 13–16). However, based on our review of the best available scientific and commercial information, as well as the expert opinion of the scientific community, we find that the Oregon-Cascades/California and Black Hills populations are not subspecies. Also in our analysis, we could not find significant differences in behavior, morphology, or habitat use for the species across its range, or that any genetic differences have yet manifested themselves into differences that can be pointed at that would support separation of the populations into subspecies.

We also reviewed whether the Black Hills population or the Oregon-Cascades/California population were distinct vertebrate population segments (DPSs) under our 1996 DPS policy (61 FR 4721, February 7, 1996). Based on a review of the best available information, we have determined that the Black Hills population and the Oregon-Cascades/California population are not significant in relation to the remainder of the taxon because they do not exist in an ecological setting unique or unusual to

the taxon; the loss of the populations would not result in a significant gap in the range of the taxon; they are not the only surviving natural occurrences of the taxon; and the genetic makeup of neither population contains unique genetic characteristics not found elsewhere in the larger boreal population. Therefore, we have determined that neither the Black Hills population nor the Oregon-Cascades/California population qualifies as a DPS under our 1996 DPS policy, and neither is a listable entity under the Act. Because the Black Hills and Oregon-Cascades/California populations of the black-backed woodpecker are not listable entities, we did not perform a status assessment under the five factors found in section 4(a) of the Act.

Finding

Based on our thorough review of the best available scientific and commercial information as summarized in our Species Assessment (Service 2017f, entire), we find that the petitioned entities identified as the Oregon-Cascades/California population and the Black Hills population of the black-backed woodpecker are not subspecies and neither meets our criteria for being a DPS under our February 7, 1996, DPS policy (61 FR 4722). Therefore the Oregon-Cascades/California and Black Hills populations of the black-backed woodpecker do not meet the definition of listable entities under the Act and, as a result, cannot warrant listing under the Act. Our complete rationale and supporting information for our subspecies and DPS determinations are outlined in our Species Assessment document (Service 2017f, entire; available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0034).

Boreal Toad (*Anaxyrus boreas boreas*)

Previous Federal Actions

On September 30, 1993, the Service received a petition from the Biodiversity Legal Foundation and Dr. Peter Hovingh. The petitioners requested that the Service list the Southern Rocky Mountains population of the ''western boreal toad'' (an alternate common name sometimes used in the past for *Anaxyrus boreas boreas*) as endangered. The petitioners also requested that the Service designate critical habitat. On July 22, 1994, we published a notice of a 90-day finding on the petition in the **Federal Register** (59 FR 37439), indicating that the petition and other readily available scientific and commercial information presented substantial information indicating that the petitioned action may be warranted.

On March 23, 1995, the Service announced a 12-month finding that listing the Southern Rocky Mountains population of the boreal toad as an endangered DPS was warranted but precluded by other higher priority actions (60 FR 15281). At that time, a listing priority number of 3 was assigned. When we find that listing a species is warranted but precluded, we refer to it as a candidate species. Section 4(b)(3)(B) of the Act directs that, when we make a ''warranted but precluded'' finding on a petition, we are to treat the petition as being one that is resubmitted annually on the date of the finding; thus, the Act requires us to reassess the petitioned actions and to publish a finding on the resubmitted petition on an annual basis. Several resubmitted candidate assessments for the boreal toad were completed. The most recent of these was published in the **Federal Register** on May 11, 2005 (70 FR 24870).

On September 29, 2005, we determined that the Southern Rocky Mountains population of the boreal toad did not warrant listing because it was not a listable entity according to the DPS criteria and, therefore, should be withdrawn from the candidate list (70 FR 56880). When the boreal toad was put on the candidate list in 1995, the DPS Policy did not yet exist, so the determination that the toad was a listable entity was not based on the current criteria. The combination of using the DPS criteria developed in 1996 and incorporating genetic and other information available during development of the 2005 finding led to determinations that the Southern Rocky Mountains population of the boreal toad was discrete, but not significant. Therefore, we determined in the 2005 finding that it was not a listable entity.

On May 25, 2011, we received a petition from the Center, the Center for Native Ecosystems, and the Biodiversity Conservation Alliance, requesting that either the Eastern or Southern Rocky Mountains population of the boreal toad be listed as an endangered or threatened DPS, and that critical habitat be designated under the Act. Please note that the Southern Rocky Mountains population is a subset of what we now call the Eastern Population of the boreal toad. We published a notice of a 90-day finding for the petition in the **Federal Register** on April 12, 2012 (77 FR 21920). In that finding we concluded that the petition presented substantial scientific or commercial information indicating that listing the Eastern Population of the boreal toad as a DPS may be warranted. The finding announced that we were initiating a review of the status of the Eastern Population to determine if listing it as a DPS is warranted. The 90-day finding further announced that we did not find substantial information that listing the Southern Rocky Mountains population of the boreal toad as a DPS may be warranted. Although the Southern Rocky Mountains population appears geographically discrete, we did not find substantial information to suggest that it may be significant according to the criteria in our DPS Policy. We concluded that there is not substantial information in the petition and in our files to suggest that the Southern Rocky Mountains population of boreal toads may be a valid listable entity (*i.e.,* a DPS) (77 FR 21920, April 12, 2012).

On June 27, 2013, the Center filed a complaint (1:13–cv–00975–EGS) to compel the Service to issue 12-month findings as to whether listing under the Act was warranted for nine species, including the Eastern Population of the boreal toad. On September 23, 2013, the Service and the Center filed a stipulated settlement agreement, agreeing that the Service would submit to the **Federal Register** a 12-month finding for the Eastern DPS of the boreal toad by September 30, 2017 (*Center for Biological Diversity* v. *Jewell* 2013, case 1:13–cv–00975–EGS). This notice constitutes the Service's 12-month finding on the 2011 petition to list the Eastern DPS of boreal toad as an endangered or threatened species.

Background

The boreal toad is a subspecies of the Western toad (*Anaxyrus boreas,* formerly *Bufo boreas*), which occurs throughout much of the western United States. Current and ongoing genetic analyses suggest the occurrence of an eastern group of boreal toads that are distinct from the rest of the subspecies. Genetic studies have helped clarify the boundaries of this group, which we now understand to include boreal toads in southeastern Idaho, western and south-central Wyoming, most of Utah (except western Box Elder County), Colorado, and north-central New Mexico. This group, which we refer to as the ''Eastern Population,'' is the focus of this finding.

The boreal toad occurs between 2,000 m (6,550 ft) and 3,670 m (12,232 ft) in areas with suitable breeding habitat within a landscape containing a variety of vegetation types, including pinon-juniper, lodgepole pine, spruce-fir forests, mountain shrubs, and alpine meadows (Service 2017f, p. 13). Breeding takes place in shallow, quiet water in lakes, marshes, bogs, ponds, and wet meadows (Service 2017f, p. 13).

We are not aware of any total population size estimates for the Eastern Population of the boreal toad. We lack information to define or precisely map all individual breeding populations of boreal toads, because some recent location data are limited to incidental sightings of individual toads. Therefore, for the purposes of our analysis, the range of the species was depicted by watershed, at the 12-digit hydrologic unit code (HUC–12) level, where a HUC–12 may include one or more current or historical breeding sites (Service 2017f, pp. 11–13). We considered these HUC–12s to be proxies for ''populations'' within the larger Eastern Population, because the 12-digit HUC is the finest grained sub-watershed delineated in the National Watershed Boundary Dataset, representing areas of 10,000–40,000 ac (4,000–16,000 ha) (USGS 2009). This approach allowed us to rely upon consistent units for analysis across the range of the boreal toad. We do not believe that the current range has changed substantially from the historical range, although some HUC–12s with documented presence of toads are now considered extirpated (Service 2017f, pp. 11–13).

We evaluated the Eastern Population of boreal toads under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722; February 7, 1996). Our complete DPS evaluation can be found in the Species Assessment and Listing Priority Assignment Form for the boreal toad (available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2012–0003) and is summarized here. The Eastern Population of the boreal toad is markedly separated from the rest of the boreal toad subspecies, based on the collective results of genetic studies that provide evidence of this discontinuity, and in particular the nuclear DNA evidence clarifying the boundaries of the Eastern Population. As a result, the Eastern Population of the boreal toad is considered a discrete population according to the DPS policy. In addition, the extirpation of this group would mean the loss of the genetic variation in this distinct group, and the loss of the future evolutionary potential (*i.e.,* representation) that goes with it. Thus, the genetic data support the conclusion that the Eastern Population of the boreal toad represents a unique and irreplaceable biological resource of the type the Act was intended to preserve. Thus, we conclude that the Eastern Population of the boreal toad differs markedly in its genetic characteristics relative to the rest of the taxon. Therefore, we consider the Eastern Population of the boreal toad significant to the taxon to which it belongs under the DPS policy. Because the Eastern Population of the boreal toad is both discrete and significant, it qualifies as a DPS under the Act. From here on in this document, we refer to this entity as the Eastern DPS of the boreal toad.

Summary of Status Review

We completed a Species Status Assessment (SSA) Report for the Eastern DPS of the boreal toad (Service 2017f, entire), which reports the results of the comprehensive biological status review by the Service for the Eastern DPS of the boreal toad, and provides a thorough account of the species' overall viability and, therefore, extinction risk. To evaluate the biological status of the boreal toad both currently and into the future, we assessed a range of conditions to allow us to consider the population's resiliency, redundancy, and representation as proxies for evaluating overall viability. The boreal toad needs multiple resilient populations (redundancy) widely distributed (representation) across its range to maintain its persistence into the future and to avoid extinction. A number of factors may increase a boreal toad population's resilience to stochastic events. These factors include (1) sufficient population size (abundance), (2) recruitment of toads into the population, as evidenced by the presence of all life stages at some point during the year, and (3) connectivity between breeding populations. As explained further in the SSA Report (Service 2017f), we used a time period of up to 50 years for the foreseeable future.

We evaluated a number of potential stressors that could influence the health and resilience of boreal toad populations (Service 2017f, p. 22), corresponding to the five factors under section 4(a)(1) of the Act. We found that the main factor influencing the status of populations is the presence of chytrid fungus, *Batrachochytrium dendrobatidis* (Bd); however, the response of boreal toads to Bd varies across the species' range (Service 2017f, p. 24). Toads in the Southern Rocky Mountains subpopulation area appear to respond most negatively when exposed to Bd, resulting in drastic declines in toad numbers at breeding sites, or the extirpation of toads at some sites. Toads in Utah do not appear to be significantly affected by Bd, and toads in western Wyoming display slow population declines through time. We consider occupied sites where Bd infection is absent to be the most resilient; some populations exist where Bd is present and are highly resistant to Bd infection, and we also consider these populations highly resilient (Service 2017f, p. 29). Other areas display moderate resistance to Bd and are, therefore, moderately resilient; low-resiliency populations are those that have little or no resistance to Bd and suffer severe population declines or extirpation (Service 2017f, p. 33).

The historical range of the Eastern DPS of boreal toad includes 439 known HUC–12s across the range of this subspecies. Currently, approximately 194 HUC–12s are considered occupied. Of these, approximately 83 HUC–12s are positive for Bd infection (Service 2017f, pp. 31–32). Occupancy within the remaining approximately 245 HUC–12s is currently unknown due primarily to the lack of recent survey effort. However, this number includes approximately 62 HUC–12s within the Southern Rocky Mountains subpopulation area that are considered unoccupied and may have been extirpated by Bd (Service 2017f, pp. 31–32). We recognize that the 439 known HUC–12s within the range of the species likely represents a minimum number of possible breeding sites, since surveys done to date have not included every area that could possibly support boreal toads (Service 2017f, p. 11).

The variability in the toads' response to Bd infection informs our understanding of the future of the boreal toad. As part of the Southern Rocky Mountains Recovery Team's update of its conservation plan, Converse *et al.* (2016, entire) and Gerber *et al.* (in review) as cited in Crockett (2017a, p. 2) developed a population persistence model, which provides a statistically rigorous assessment of viability of boreal toads in the Southern Rocky Mountains (Crockett 2017a, p. 2). The model, based on data on the occupancy of sites by toads and the presence of Bd, is described in greater detail in our SSA Report (Service 2017f, pp. 24, 34–35). This model predicts a greater-than-95 percent probability of persistence of toads within the Southern Rocky Mountains over the next 50 years, but with lower population levels, fewer breeding sites, and reduced geographic distribution. Given that boreal toads in other geographic areas display higher levels of resistance to Bd infection (and there is no information to suggest that situation will change), we believe this model represents a worst-case scenario when considering the future condition of the Eastern DPS as a whole (Service 2017f, pp. 35–36). If we anticipate that

this high level of persistence will occur within an area most susceptible to Bd infection (with possible reductions in resilience, representation, or redundancy), toads in other population areas are likely to fare even better, maintaining robust breeding populations into the future, although there is uncertainty regarding how climate change may factor into the future condition of the Eastern DPS (Service 2017f, p. 36).

In summary, boreal toad populations are currently experiencing variability in their response to Bd infection, which we consider to be the primary stressor on boreal toad population resilience. The most-susceptible population to Bd infection experiences high population losses and localized extirpations, but some breeding sites continue to persist despite significant population declines. Some populations within the range show little or no evidence of impacts caused by Bd infection and remain robust despite the presence of Bd. Other areas show some population decline, but at much lower severity than observed in the Southern Rocky Mountains. This analysis is described in greater detail in our SSA Report (Service 2017f, entire). Therefore, we have concluded that the Eastern DPS of boreal toad is not in danger of extinction because it will likely continue to maintain self-sustaining populations distributed across its range over the next 50 years.

Having determined that the Eastern DPS of boreal toad is not currently in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we next considered whether there are any significant portions of the range where the species is in danger of extinction or is likely to become endangered in the foreseeable future. Given the apparent greater vulnerability to Bd of boreal toads in the Southern Rocky Mountains (Service 2017f, p. 24), we evaluated whether the population could be considered endangered or threatened in this portion of its range. We found that in this portion of the range, 51 percent of HUC–12s are in the high or moderate resilience category, and these are spread throughout the Southern Rocky Mountains, providing adaptive capacity (representation) and redundancy in the face of catastrophic events (Service 2017f, p. 30). Looking into the foreseeable future, we considered the best data available—the only existing model of population persistence focused on the Southern Rocky Mountains. That model predicted a 95-percent probability of persistence for toads in this geographic area in 50 years (Service 2017f, p. 35). Despite the possible reductions in breeding sites and occupied mountain ranges in the foreseeable future, the current and projected future conditions indicate a low risk of extinction for boreal toads in the Southern Rocky Mountains. Therefore, Eastern boreal toads are not in danger of extinction or likely to become so in the foreseeable future in the Southern Rocky Mountains portion of its range.

Finding

We reviewed the best available scientific and commercial information pertaining to the Eastern DPS of the boreal toad, corresponding to the Act's five threat factors. Because boreal toads in the Eastern DPS are distributed across the majority of their historical range, with a large percentage of populations in a moderate or high resiliency category in the face of Bd, which is the primary stressor influencing the species (Service 2017f, pp. 11–12, 33–34), we find that the species retains adaptive capacity and has a very low risk of extirpation due to stochastic or catastrophic events that could plausibly occur in the future. Therefore, we conclude that the current risk of extinction is low, such that the Eastern DPS of boreal toads is not in danger of extinction throughout all of its range.

In addition, because we project a high probability of persistence in the face of Bd across the majority of the range of the Eastern DPS in 50 years, even under a worst-case scenario (Service 2017f, pp. 35–36), we find that the species has a low future risk of extirpation due to plausible stochastic or catastrophic events in the foreseeable future and that, due to the high probability of persistence and the low risk of extirpation, the species is expected to retain most of its adaptive capacity. Therefore, we conclude that the risk of extinction in the foreseeable future is low, and the Eastern DPS of boreal toad is not likely to become an endangered species within the foreseeable future throughout all of its range.

Finally, we considered whether there are any significant portions of the range where the population is in danger of extinction or is likely to become so in the foreseeable future. We evaluated the Southern Rocky Mountains portion of the range, where the population has evidenced the least ability to resist Bd, the primary stressor, and found a low risk of extirpation of the Eastern boreal toad even in that portion of its range. Based on this analysis, we concluded that there is not a significant portion of the DPS's range where the species is in danger of extinction or likely to become so in the foreseeable future.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Eastern DPS of the boreal toad. Because the species is neither in danger of extinction now nor likely to become so in the foreseeable future throughout all or any significant portion of its range, the species does not meet the definition of an endangered species or threatened species. Therefore, we find that listing the Eastern DPS of boreal toad as an endangered or threatened species under the Act is not warranted at this time. This document constitutes the Service's 12-month finding on the 2011 petition to list the Eastern DPS of boreal toad as an endangered or threatened species. A detailed discussion of the basis for this finding can be found in the Eastern DPS of boreal toad's species-specific Species Assessment and Listing Priority Assignment Form, SSA Report, and other supporting documents (available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2012–0003).

Fisher (*Pekania pennanti*)

Previous Federal Actions

On December 29, 1994, we received a petition dated December 22, 1994, from the Biodiversity Legal Foundation requesting that two fisher populations in the western United States, including the States of Washington, Oregon, California, Idaho, Montana, and Wyoming, be listed as threatened under the Act. Based on our review, we found that the petition did not present substantial information indicating that listing the two western United States fisher populations as DPSs was warranted (61 FR 8016; March 1, 1996).

On March 6, 2009, we received a petition dated February 24, 2009, from the Defenders of Wildlife, Center, Friends of the Bitterroot, and Friends of the Clearwater requesting that the fisher population in the Northern Rocky Mountains (NRM) of the United States be considered a DPS and listed as endangered or threatened, and critical habitat be designated under the Act. We published a 90-day finding on April 16, 2010, stating that the petition presented substantial information that listing a DPS of fisher in the NRMs may be warranted, and initiated a status review of the species (75 FR 19925). The next annual Candidate Notice of Review (CNOR), published on November 10, 2010, also included a notice of the 90-day finding and commencement of a 12-month status review for the fisher NRM

DPS (75 FR 69222). In our June 30, 2011, 12-month finding, we concluded that the fisher in the U.S. Northern Rocky Mountains of western Montana and north-central to northern Idaho constitutes a DPS (hereafter referred to as NRM fisher). However, we concluded that listing the NRM fisher as an endangered or threatened species was not warranted.

On September 23, 2013, the Center, Defenders of Wildlife, Friends of the Bitterroot, Friends of the Clearwater, Western Watersheds Project, and Friends of the Wild Swan petitioned the Service to list the NRM fisher as threatened or endangered under the Act. We published a positive 90-day finding on the petition on January 12, 2016 (81 FR 1368). We published a notice of commencement of a status review for the NRM fisher on January 13, 2017 (82 FR 4404). In August 2016, the Service entered into a settlement agreement with the Center, requiring the Service to submit a proposed listing rule or not-warranted 12-month finding for the NRM fisher to the **Federal Register** by September 30, 2017. This notice satisfies the requirements of that settlement agreement for the NRM fisher and constitutes the Service's 12-month finding on the 2013 petition to list the NRM fisher as an endangered or threatened species.

Background

The fisher is a forest-dwelling, medium-sized mammal, light brown to dark blackish-brown in color, found throughout many forested areas in Canada and the United States. The fisher has a long body with short legs and a long bushy tail. The fisher is classified in the order Carnivora, family Mustelidae, a family that also includes weasels, mink, martens, and otters (Anderson 1994, p. 14). The distribution of NRM fishers includes forested areas of western Montana and north-central to northern Idaho, and potentially northeastern Washington (Service 2017g, p. 15). Genetic analyses confirm the presence of a remnant native population of fishers in the NRM that escaped presumed extirpation early in the 20th century (Vinkey *et al.* 2006 p. 269; Schwartz 2007, p. 924; Knaus *et al.* 2011, p. 7). The population was supplemented with reintroductions of fisher from the Midwest and Canada in the mid to late 1900's (Service 2017g, p. 12). Some fishers in the NRM still reflect the genetic legacy of the remnant native population, with unique genetic identity found nowhere else in the range of fishers (Service 2017g, p. 14).

Fisher habitat includes low- to mid-elevation environments of mesic (moderately moist), coniferous and mixed conifer and hardwood forests (reviewed by Hagmeier 1956, entire; Arthur *et al.* 1989a, pp. 683–684; Banci 1989, p. v; Aubry and Houston 1992, p. 75; Jones and Garton 1994, pp. 377–378; Powell 1994, p. 354; Powell *et al.* 2003, p. 641; Weir and Harestad 2003, p. 74). Fishers are associated more commonly with mature forest cover and late-seral forests with greater physical complexity than other habitats (reviewed by Powell and Zielinski 1994, p. 52). In the NRM, fishers select for landscapes with abundant large trees (Schwartz *et al.* 2013, p. 109; Olsen *et al.* 2014, p. 93) and greater than 50 percent mature forest (Sauder and Rachlow 2014, pp. 79–80) arranged in a contiguous, complex mosaic (Sauder and Rachlow 2014, p. 79). These features occur in regions of the NRM receiving greater mean annual precipitation (Olson *et al.* 2104, p. 93) and having mid-range values for mean temperature in the coldest month (Olson *et al.* 2104, p. 93). Within areas of low- and mid-elevation forests, the most-consistent predictor of fisher occurrence at larger spatial scales is moderate to high levels of contiguous canopy cover rather than any particular forest plant community (Buck 1982, p. 30; Arthur *et al.* 1989b, pp. 681–682; Powell 1993, p. 88; Jones and Garton 1994, p. 41; Weir and Corbould 2010, p. 408).

NRM fishers select heterogeneous areas with intermediate abundance of habitat edge and high canopy cover within home ranges, not necessarily areas containing more-mature forest (Sauder and Rachlow 2015, pp. 52–53). In general, composition of individual fisher home ranges is usually a mosaic of different forested environments and successional stages (Sauder and Rachlow 2015, pp. 52–53; reviewed by Lofroth *et al.* 2010, p. 94). Cavities and branches in trees, snags, stumps, rock piles, and downed timber are used as resting sites, while cavities in large-diameter live or dead trees are selected more often for natal and maternal dens (Powell and Zielinski 1994, pp. 47, 56). A unique aspect of the landscapes that fishers use in the NRM is the presence of an ash layer in the soil profile—which is linked to increased forest productivity and potential resilience to drought (McDaniel and Wilson 2007, p. 32).

Summary of Status Review

We completed a Species Status Assessment (SSA) Report for the NRM fisher, which reports the results of the comprehensive biological status review and provides a thorough account of the species' overall viability and, therefore, extinction risk. To assess the NRM fisher's current and future statuses, we used the three conservation biology principles of resiliency, redundancy, and representation. Specifically, we identified the species' ecological requirements at the individual, population, and species levels and described the stressors influencing the species' viability. The NRM fisher needs multiple, resilient populations distributed across its range in a variety of ecological settings to persist into the future and to avoid extinction.

The biological information we reviewed and analyzed as the basis for our findings and projections for the future condition of the species is documented in the SSA Report (Service 2017g, entire). The potential stressors we evaluated in detail in the SSA Report (Service 2017g, entire) include climate change (Factor A), development/roads (Factor A), forestry (Factor A), fire (Factor A), trapping (Factor B), poisoning (Factor E), and predation (Factor C) (Service 2017g, chapter 3.5). For the reasons described in the SSA Report, there is no evidence to suggest that climate change, development, forestry, fire, trapping, poisoning, or predation are having population-level impacts to the NRM fisher, either individually or cumulatively with any other potential threats (Service 2017g, chapter 3.5 and chapter 4.9).

The NRM fisher currently exhibits a level of viability (characterized using resiliency, redundancy, and representation) that allows them to occur across their historical range (Service 2017h, chapter 3.6). A species distribution model estimates about 30,000 sq km (78,000 sq mi) of potential habitat for fisher in the NRM (Service 2017g, p. 25). Fisher habitat is inherently resistant to stochastic events (resilient) such as localized fire and drought (Service 2017g, p. 51) because the effects of such events on fisher habitat are mediated by the wetter, maritime climate and diverse topography across much of the NRM, as evidenced by the longer fire-return intervals that characterize most of the modeled fisher habitat (Service 2017g, p. 51). In order to characterize spatial distribution of potential fisher habitat, we divided the area of the NRM into three spatial units. In addition, since population size of the NRM fisher has not been estimated, we rely on describing the amount and distribution of modeled habitat patches at two scales to make inferences about the NRM fisher. The smaller scale habitat patch is 100 km^2—the approximate size of a male fisher home range and area needed

to sustain individual fishers. The larger scale habitat patch is 2,500 km^2—a minimum critical area (MCA) needed to sustain 50 breeding fisher and avoid the effects of inbreeding depression.

Within the NRM, there is redundancy of modeled habitat patches at the home-range scale (100 km^2) (Service 2017g, p. 52). In addition, two of the three fisher spatial units have three or more MCAs (2,500 km^2), thereby lowering the risk that even a large, catastrophic event could eliminate all larger, contiguous habitat patches (Service 2017g, p. 52). Representation of suitable fisher habitat across the NRM appears high, and fisher have been able to adapt to shifting habitat in the past as glacial ice sheets melted and habitat distribution changed (Service 2017g, p. 52). A native genotype is still present in the NRM, along with individuals with genetic signatures presumably from past reintroductions (Service 2017g, p. 14). Fishers can utilize a wide variety of prey, thereby minimizing the influence of changing environmental conditions on prey abundance and distribution (Service 2017g, p. 52).

We assessed the future condition of the NRM fisher by analyzing the number and distribution of potential habitat patches at the home-range scale (100 sq km) and MCA scale (2500 sq km) among fisher spatial units in the NRM at three future time points (years 2030, 2060, and 2090) and under two future scenarios incorporating stressor trajectories derived from the scientific literature (Service 2017g, chapter 4.8). In both future scenarios, modeled fisher habitat is expected to be widely distributed across its range and, in some cases, increase (Service 2017g, pp. 57–58). Under these modeled future scenarios, we expect resiliency to remain stable or increase in the future (Service 2017g, pp. 65–67). Redundancy of habitat patches capable of supporting multiple fisher (100 sq km) and the number of MCAs (2500 sq km) are expected to increase under Scenario 1 and be widely distributed among all fisher spatial units (Service 2017g, p. 68). Fewer habitat patches capable of supporting multiple fishers (100 sq km) and slightly fewer MCAs (2500 sq km) are expected in the future under Scenario 2 than Scenario 1; however, habitat patches are expected to remain well distributed among fisher spatial units (Service 2017g, p. 68). Regarding representation, the full genetic diversity of fisher in the NRM is unknown; however, four different genetic haplotypes exist in the NRM (Service 2017g, p. 68). The native haplotype, along with three other haplotypes presumed to be from historical fisher reintroductions, indicate some level of genetic variability within the fisher population in the NRM; this variability is expected to persist into the future (Service 2017g, p. 68). Both modeled future scenarios predict that adequate distribution of patches among fisher spatial units will remain into the future (Service 2017g, p. 68). Thus, representation is expected to remain high in the future (Service 2017g, p. 68). This analysis is described in greater detail in our SSA Report (Service 2017g, entire).

Finding

We evaluated the NRM fisher under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS) Under the Endangered Species Act (61 FR 4722; February 7, 1996). Based on the best scientific and commercial information available, we find that the fisher in the NRM is both discrete and significant to the taxon to which it belongs. Fishers in the NRM are markedly separated from other populations of the same taxon as a result of physical factors, further supported by quantitative differences in genetic identity. The loss of the fisher in the NRM would result in the loss of markedly different genetic characteristics relative to the rest of the taxon and a significant gap in the range of the taxon; therefore, we consider the NRM fisher to be significant to the taxon to which it belongs (Service 2017h, pp. 12–14). Because the fisher in the NRM is both discrete and significant, it qualifies as a DPS under the Act.

We reviewed the best available scientific and commercial information pertaining to the status of the NRM fisher, corresponding to the Act's five threat factors. Currently, based on modeled habitat, there is a high-level (in both quantity and distribution) condition of individual home ranges (100 sq km) and a moderate-level condition of MCAs (2,500 sq km) across the NRM (Service 2017g, chapter 3.6). Habitat patches are widespread in distribution and occupy a part of the NRM that has a distinct ash cap in the soil left from the eruption of Mount Mazama, thereby increasing the soils' water retention properties and making NRM fisher habitat relatively resilient to future environmental change stemming from climate change (Service 2017g, p. 4). Modeled habitat patches that are currently present throughout the NRM indicate that they are likely to sustain fisher in the short and long term and to persist throughout the NRM through at least 2090 (Service 2017g, chapter 3.6). Modeled habitat patches are redundant among the three fisher spatial units, and this redundancy is expected to remain into the future (Service 2017g, p. 68). Representation, both currently and in the future, is predicted to remain high among all three fisher spatial units because of connectivity across the NRM, the mobile nature of dispersing fisher, and the continued existence of the native genotype (Service 2017g, p. 68). Although there is inherently some level of uncertainty to any model, we conclude that the potential stressors that the NRM fisher is facing do not place the species in danger of extinction. Therefore, we conclude that the current risk of extinction is low, such that the NRM fisher is not in danger of extinction throughout all of its range, *i.e.,* not an endangered species throughout its range at this time.

To evaluate the status of the species in the future, we considered two overall future scenarios out to 2030, 2060, and 2090. We used these timeframes because the best available science (Olsen et al. 2014, p. 92), used these timeframes to synthesize and project the effects of potential stressors on viability of NRM fisher (Service 2017g, chapter 4.8) in the future. We expect fisher habitat to shift north and east, with widely distributed habitat across its range under both future scenarios (Service 2017g, pp. 65–68). Fishers have good overall dispersal capability and, given that canopy cover is expected to be adequate across much of the NRM, are expected to adapt to habitat shifts in the future (Service 2017g, p. 65). NRM fisher resiliency is expected to be maintained or increase in future scenarios (Service 2017g, pp. 65–67). In terms of redundancy, under both modeled future scenarios, we predict that the NRM fisher modeled habitat will remain or increase in distribution and amount across its range and that redundancy will be in a moderate to high condition (Service 2017g, p. 68). We expect fisher in the NRM to retain their ability to withstand catastrophic events (Service 2017g, p. 68). In terms of representation, in both future scenarios, we predict the NRM fisher will continue to occupy the full extent of its range and ecological settings and will maintain its current level (high) of representation (Service 2017g, p. 68) through 2090.

We conclude that, despite the uncertainties inherent in any modeling of future scenarios, the risk of extinction of the NRM fisher in the foreseeable future is low, such that the NRM fisher is not likely to become an endangered species within the foreseeable future throughout all of its range. Overall, resiliency, redundancy, and representation are expected to be stable or increasing into the future at both

scales (100 sq km and 2500 sq km) (Service 2017g, chapters 3.6 and 4.9). Under both future scenarios, and based on our modeled habitats, we expect adequate available habitat distributed across the NRM to support multiple individual home ranges (100 sq km) and MCAs (2500 sq km) to provide resiliency (to tolerate environmental and demographic stochasticity), redundancy (to withstand catastrophic events), and representation (to allow for future adaptive capacity) (Service 2017g, chapter 4.9). Thus, after assessing the best available information, we conclude that the NRM fisher is not in danger of extinction throughout all of its range nor is it likely to become so in the foreseeable future, *i.e.,* not a threatened species throughout its range.

Having determined that the NRM fisher does not meet the definition of a threatened or endangered species throughout all of its range, we next considered whether there are any significant portions of the range where the species is in danger of extinction or is likely to become endangered in the foreseeable future. The SSA Report did not identify any areas of the species' range where stressors are currently having any population-level negative impacts to the NRM fisher (Service 2017g, chapter 3.5). There is no evidence to suggest that climate change, development, forestry, fire, trapping, poisoning, or predation are having population-level impacts to the species either individually or cumulatively with any other potential threats (Service 2017g, chapter 3.5). We conclude there are no concentrations of threats in any portion of the range such that the species could be in danger of extinction now or likely to become so in the foreseeable future in a particular portion (Service 2017h, pp. 26–27). Therefore, no portion warrants further consideration to determine whether the species may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range (Service 2017h, pp. 26–27).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the NRM fisher. Because the species is neither in danger of extinction now nor likely to become so in the foreseeable future throughout all or any significant portion of its range, the species does not meet the definition of an endangered species or threatened species. Therefore, we find that listing the NRM fisher as an endangered or threatened species under the Act is not warranted at this time. This notice constitutes the Service's 12-month finding on the petition to list the NRM fisher as an endangered or threatened species. A detailed discussion of the basis for this finding can be found in the NRM fisher's Species Assessment and Listing Priority Assignment Form, SSA Report, and other supporting documents (available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2015–0104).

Florida Keys Mole Skink *(Plestiodon egregius egregius)*

Previous Federal Actions

On April 20, 2010, we received a petition from the Center to list 404 aquatic, riparian, and wetland species from the southeastern United States—including the Florida Keys mole skink—as endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding, which determined that the petition contained substantial information indicating the Florida Keys mole skink may warrant listing, and initiated a status review for the subspecies (76 FR 59836). As a result of the Service's 2013 settlement agreement with the Center, the Service is required to submit a 12-month finding to the **Federal Register** by September 30, 2017. This notice satisfies the requirements of that settlement agreement for the Florida Keys mole skink and constitutes the Service's 12-month finding on the April 20, 2010, petition to list the Florida Keys mole skink as an endangered or threatened species.

Background

The Florida Keys mole skink is one of five distinct subspecies of mole skinks, all in the genus *Plestiodon* (previously referred to as *Eumeces*) (Brandley *et al.* 2005, pp. 387–388). The Florida Keys mole skink is isolated from the mainland and limited to islands of the Florida Keys. This subspecies is a slender, small, brownish lizard with smooth scales, two to four pairs of light stripes, and a brilliantly colored tail. This subspecies is semi-fossorial (adapted to digging and living underground) and cryptic in nature, but has also been seen running along the substrate surface when exposed. Adults reach a total length of approximately 13 cm (5 in) (Florida Natural Areas Inventory 2001, p. 1).

Historically, the Florida Keys mole skink has been found in low numbers across the range from Key Largo to Dry Tortugas (north to south). Current surveys documented the subspecies from Long Key southwest to the Marquesas Keys, but no current records have been documented as far west as the Dry Tortugas or in the Upper Keys in the Key Largo area. The Florida Keys mole skink occurs in the beach berm (50 to 80 cm [20 to 31 in] above sea level) and coastal hammock habitats and relies on dry, unconsolidated soils for movement, cover, and nesting. The dry, unconsolidated soils allow for the Florida Keys mole skink to dig nest cavities. Because of the predominantly limestone, prehistoric coral reef, and rocky composition of the Florida Keys, only a few areas [137 to 191 ha (340 to 472 ac)] provide the suitable soils needed for Florida Keys mole skink nesting. This subspecies needs detritus, leaves, wrack, and other ground cover over loose substrate as cover and to locate the insects that serve as a food source. These ground cover and substrate conditions also provide reproductive and thermoregulatory refugia.

The Florida Keys mole skink subspecies was listed as a threatened species by the State of Florida in 1974 under the Florida Endangered and Threatened Species Act but was changed to a species of concern in 1978. In 2010, after a subspecies status review, the Florida Fish and Wildlife Conservation Commission (FWC) determined the Florida Keys mole skink warranted listing as a State-designated threatened species. Under the Florida Endangered and Threatened Species Act, ''threatened species'' means ''any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subjected to increased stress as a result of further modification of its environment.'' The FWC uses a system to rank and evaluate species and subspecies according to biological vulnerability. If the species or subspecies meets at least one of the criteria for listing as a State-designated Threatened species based on International Union for Conservation of Nature (IUCN) guidelines and criteria in Rule 68A–27.001, F.A.C., then the FWC makes a determination whether listing a species or subspecies is warranted. The criteria in the *Guidelines for Using the IUCN Red List Categories and Criteria (Version 13)* are (A) population size reduction, (B) geographic range size, (C) population size and trend, (D) population very small or restricted, and (E) quantitative analysis of extinction risk (IUCN 2017, p. 15). The FWC justified the listing as a State-designated Threatened species for the Florida Keys mole skink based on criterion D, which is met when a population has a very

restricted area of occupancy (estimated at 20.3 sq km) (7.8 sq mi) of potential habitat) such that it is prone to the effects of human activities or stochastic events within a short time period in an uncertain future (FWC 2011, pp. 10, 14). In 2013, a Florida Keys mole skink State Action Plan was developed with the goal of improving the conservation status of the Florida Keys mole skink to the point at which the subspecies is secure within its historical range (FWC 2013).

Summary of Status Review

In completing our status review for the Florida Keys mole skink, we reviewed the best available scientific and commercial information and compiled the information in the Species Status Assessment Report (SSA Report) (Service 2017i) for the Florida Keys mole skink. We evaluated all known potential impacts to the Florida Keys mole skink, including the Act's five threat factors. This evaluation included information from all sources, including Federal, State, academic, and private entities, and the public.

Historical observations documented the Florida Keys mole skink from Key Largo, Plantation Key, Upper Matecumbe Key, Indian Key, Long Key, Grassy Key, Boot Key, Key Vaca, Saddlebunch, West Summerland Key, Sawyer Key, Bahia Honda, Big Pine Key, Boca Chica, Middle Torch Key, East Rockland Key, Stock Island, Key West, Mooney Harbor (Marquesas), and Dry Tortugas (north to south) (Florida Museum of Natural History 2011; Florida Natural Areas Inventory 2011; Mays and Enge 2016, entire; Mount 1965, p. 208). Currently, no population estimates exist for the subspecies; however, recent (2014–present) targeted and opportunistic surveys for the Florida Keys mole skink have documented 127 records from Long Key to Marquesas (north to south) (Emerick and FWC 2017; Mays and Enge 2016, entire). Of these, 104 observations or captures have been documented during targeted surveys at one location, the Long Beach site on Big Pine Key. An approximate 1:1 ratio of male to female was observed although the sex was undeterminable for 40 percent of the Long Beach captures. A second location, Ohio Key, has existing suitable habitat; however, targeted searches by Service staff have yielded zero observations at this location. From November 2016 to January 2017, opportunistic searches at 10 locations yielded 8 skinks from 4 additional locations: Long Key, Content Key, Cook Island, and Big Munson Key.

Preliminary genetic research on the five *Plestiodon egregius* subspecies has recently identified at least four genetically distinct populations within the Florida Keys mole skink subspecies (Parkinson *et al.* 2016). These preliminary findings should be taken with caution as the study used small sample sizes from a limited number of locations, and additional samples collected from other Keys are still to be processed. We did not explore the possibility of these genetically distinct populations as qualifying as distinct population segments under the Act, because we were not petitioned to do so. The preliminary genetic evidence suggests that little to no breeding is taking place between the four genetically distinct populations, suggesting that the structure of the subspecies is that of discrete, minimally to non-interbreeding populations (Parkinson *et al.* 2016). It is likely that some level of stochastic passive dispersal of individuals, primarily via rafting (carried by floating debris and seaweed wrack), is occurring, but the degree of success for the Florida Keys mole skink in establishing new populations on unoccupied islands is uncertain (Branch *et al.* 2003, p. 207; Adler *et al.* 1995, pp. 535–537).

The Florida Keys mole skink has limited genetic and environmental variation (subspecies representation) within the Keys, and there is no behavioral or morphological variation within the subspecies. Despite the subspecies' occurrence across many Keys (subspecies redundancy), there are gaps in the data on the subspecies' actual range-wide distribution and abundance. Based on preliminary research, there are four genetically distinct populations and additional individuals (not yet identified into populations) occurring across separate Keys; however, little information exists on the abundance or growth rate of these populations (population resiliency).The largest and most consistently surveyed area, Long Beach on Big Pine Key, indicates that all life stages, including breeding and nesting, are occurring in this area.

The primary stressors affecting the current and future condition of the Florida Keys mole skink are sea-level rise; climate-change-associated shifts in rainfall, temperature, and storm intensities; and human development. These stressors account for indirect and direct effects at some level to all life stages and the habitat and soils across the subspecies' range. The beach berm and coastal hammock habitat upon which the subspecies relies for food, nesting, and shelter are susceptible to flooding, inundation, and saltwater intrusion from sea-level rise and climate-change-associated factors. We geospatially assessed potentially available suitable habitat (beach berm and coastal hammock) for the Florida Keys mole skink, and the current total acreage of available suitable habitat in the Florida Keys from Key Largo to the Dry Tortugas is approximately 3,700 ha (9,100 ac). In addition, we assessed potentially available suitable dry, unconsolidated soils (Bahia fine sand, beach, and unconsolidated soils) from Monroe County Soil maps for this same range with some overlap of the suitable habitat identified, and the current suitable soils total approximately 138 to 191 ha (340 to 472 ac) and mainly occur on six of the Keys in Monroe County: Lower Matecumbe, Long Key, Boot Key, Bahia Honda, Big Pine, and Key West (Monroe County 2016). There are small patches of unconsolidated soils that occur intermixed within other habitats across the islands, primarily in the coastal hammock. The long-term trend in sea-level rise at the National Oceanic and Atmospheric Administration (NOAA) Key West Station shows a 2.4 mm (0.09 in) increase of the mean high water line per year from 1913 to 2015, and the NOAA Vaca Key Station shows a 35 mm (0.14 in) increase per year from 1971 to 2015 (NOAA 2017a).

Our analyses include consideration of ongoing and projected changes in climate within the next 83 years. We analyzed suitable habitats (beach berm and coastal hammock) and soils (beach sand and Bahia fine sand) across the range of the Florida Keys mole skink to predict inundation from three regional climate-change sea-level rise projections at 2040, 2060, and 2100. However, foreseeable future for this subspecies was determined to be a 30–40-year timeframe. This determination considered the biology of the subspecies, the stressors identified, and the consistency in the sea-level rise projections to 2060. This includes the expectation that sea-level rise will increase over time, but there is also uncertainty about how the Florida Keys mole skink will respond and how suitable habitats may transition. The generation time of the Florida Keys mole skink is typically 3 to 4 years, so the foreseeable future range of 30–40 years encompasses 10–13 generations, which allows sufficient time for any population-level response to stressors to be detected. Although our analyses predicted inundation out to 2100, we did not extend our foreseeable future beyond 30–40 years due to too much uncertainty in the projections that far out and the divergence among the Low,

Medium, and High sea-level rise projections beyond 2060.

Based on this range-wide geospatial analysis, we projected that by 2040 the subspecies could experience the loss of 2 to 17 percent of its suitable habitat rangewide (a loss of 81 to 631 ha (200 to 1,559 ac)) of the 3,669 ha (9,066 ac) of suitable habitat estimated to be available currently. By 2040, suitable soils are projected to decline by 19 to 37 percent (30 to 58 ha (74 to 143 ac)) of the 155 ha (383 ac) of suitable soils estimated to be available currently. Under 2060 projections, the amount of suitable habitat and soils loss is expected to be 4 to 44 percent and 25 to 50 percent, respectively. The sea-level-rise projections predict inundation only and do not model the complex set of shifts that are anticipated to be triggered over time as the effects of sea-level rise are experienced.

Overall, the Florida Keys mole skink may experience reductions in population resiliency, subspecies redundancy, and subspecies representation due to sea-level rise and climate-change-associated factors. However, although we expect some habitat loss and inundation across the range of the Florida Keys mole skink, the best scientific and commercial data available indicate that 56 to 98 percent of the suitable habitat and 50 to 81 percent of the suitable soils will remain into the foreseeable future.

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, as well as the continued presence of adequate resources to meet the subspecies' needs, we find that the stressors acting on the subspecies and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the Florida Keys mole skink is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range.

The main stressors that may affect Florida Keys mole skink resiliency are sea-level rise, climate-change-associated factors, and development (all under Factor A). The Florida Keys has experienced sea-level rise rates equivalent to the global rate (Service 2017i, p. 5), with no indication that these factors are currently acting on the subspecies. The persistence of occupied habitat (as well as potentially occupied suitable habitat) across the subspecies' range demonstrates resiliency, redundancy, and representation to sustain the subspecies beyond the near term. Continued occurrence of the Florida Keys mole skink across most of the historical range indicates a level of resiliency to the stressors that have been acting upon it in the past and are currently acting on it. Strong rainstorms, tropical storms, and hurricanes are all natural parts of the tropical Florida Keys ecosystem and may be a contributing factor to the low historical and current observation data for the subspecies. Since the subspecies has persisted on multiple Keys with human development and activities over time, it is likely that development will not be a driving stressor on the future viability of the Florida Keys mole skink. Over time, the subspecies has persisted on different Keys providing a level of redundancy, which may help the Florida Keys mole skink withstand the increased potential for catastrophic events into the future. Finally, the subspecies should continue to exhibit a level of representation with suitable habitat and soils continuing to occur in multiple Keys across the range of the subspecies.

As mentioned above, the FWC determined the Florida Keys mole skink met the criterion D as a very restricted population and, therefore, listed the Florida Keys mole skink as a State-designated Threatened species in 2010. While the Florida Keys mole skink meets at least one criterion of a State-designated Threatened species under the Florida Endangered and Threatened Species Act, in our analysis under the Federal Endangered Species Act, we find that the continued presence of occupied habitat (as well as potentially occupied suitable habitat) across most of the subspecies' range continues to provide a level of resiliency, redundancy, and representation to the subspecies in the near term and within the foreseeable future. Therefore, we conclude the Florida Keys mole skink is likely to remain at a sufficiently low risk of extinction and will not become in danger of extinction in the foreseeable future and, thus, does not meet the definition of an endangered species or threatened species under the Act.

We evaluated the current range of the Florida Keys mole skink to determine if there are any apparent geographic concentrations of potential threats to the subspecies. The risk factors that occur throughout the Florida Keys mole skink's range include sea-level rise; climate-change-associated shifts in rainfall, temperature, and storm intensities; and human development. We did not find that there was a concentration of threats in a particular area that would cause the subspecies to be in danger of extinction or likely to become so in the foreseeable future throughout any portion of its range. Therefore, we find that listing the Florida Keys mole skink as a threatened or an endangered species is not warranted in a significant portion of its range. A detailed discussion of the basis for this finding can be found in the Florida Keys mole skink species-specific assessment form and other supporting documents (available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0067).

Great Sand Dunes Tiger Beetle (*Cicindela theatina*)

Previous Federal Actions

As part of a multispecies petition in 2007, Guardians (which at the time was called ''Forest Guardians'') petitioned the Service to list the Great Sand Dunes tiger beetle (referred to in the petition as the ''Colorado tiger beetle,'' an older common name for the species). The petition requested that we evaluate all full species in our Southwest Region (where the Great Sand Dunes tiger beetle was erroneously thought to occur) ranked as G1 or G2 by the organization NatureServe, and list each species under the Act as either endangered or threatened with critical habitat. In 2009, we published a 90-day finding, in which we concluded that the petition presented substantial information that listing the Great Sand Dunes tiger beetle may be warranted (74 FR 66866, December 16, 2009).

Background

The Great Sand Dunes tiger beetle is a medium-sized tiger beetle in the family Cicindelidae. The species occurs only in the Great Sand Dunes geological feature in southern Colorado. The life history of the Great Sand Dunes tiger beetle is closely tied to the sand dunes for all stages of the species' life cycle, including feeding, sheltering, and reproducing (Service 2017j, p. 13). Suitable habitat is considered to include active dunes, which may include sandy blowouts and shifting sands, with a vegetative cover between 0.20 to 15 percent cover (Service 2017j, p. 13).

Three types of dune provinces, or areas, are present within the Great Sand Dunes complex—the main sand dune mass, sand sheet dunes, and playa lakes dunes. All three types provide suitable habitat for the Great Sand Dunes tiger beetle (Service 2017j, p. 8). The current estimated area of suitable habitat is approximately 12,770 ac (5,168 ha), which consists of a combination of areas of verified occupied habitat and areas of likely suitable habitat, based on sand and vegetation conditions (Service

2017j, p. 8). There is neither a precise population estimate nor population monitoring data for the species.

Summary of Status Review

We completed a Species Status Assessment (SSA) Report for the Great Sand Dunes tiger beetle (Service 2017j, entire), which provides the results of the Service's comprehensive biological status review for the Great Sand Dunes tiger beetle, and provides a thorough account of the species' overall viability and, therefore, risk of extinction. To evaluate the biological status of the Great Sand Dunes tiger beetle, the SSA Report assesses a range of conditions, both current and into the future, to allow us to consider the species' resiliency, redundancy, and representation as proxies for evaluating overall viability. The Great Sand Dunes tiger beetle needs multiple self-sustaining subpopulations (redundancy) that are both widely distributed (representation) and connected across its range to maintain its viability into the future and to avoid extinction (Service 2017j, p. 22). A number of factors influence whether the Great Sand Dunes tiger beetle will maintain large and stable subpopulations, which increases the resiliency of a population to stochastic events. These factors include (1) a relatively stable dune system maintained by a complex combination of hydrologic and wind conditions, (2) relatively undisturbed dunes, (3) the presence of suitable vegetation cover on the dunes (0.2 to 15 percent cover), and (4) connectivity between the sub-populations (Service 2017j, p. 19).

The SSA Report evaluates the Great Sand Dunes tiger beetle's subpopulations, and what is negatively and positively affecting those subpopulations, within the three dune provinces present at the Great Sand Dunes complex. The species is currently distributed across most of the known geographic extent of its range, including all three dune areas (Service 2017j, p. 27). The most significant potential stressor to the Great Sand Dunes tiger beetle would be the potential future loss of dune habitats that individuals need to complete their life cycle. Surface disturbances within areas of suitable habitat can result in loss of habitat and injury or mortality of individuals. Historical and current surface disturbances in areas of suitable habitat are estimated to be low, representing less than 5 percent of the suitable habitat (Service 2017j, pp. 29–32). Field observation data from 2000 to 2016 indicate a continued occupancy of the dunes by the Great Sand Dunes tiger beetle (Service 2017j, p. 28).

The SSA found that the Great Sand Dunes tiger beetle population is currently experiencing relatively stable dunes and minimal surface disturbances due to land management under the National Park System, The Nature Conservancy, and the Service's National Wildlife Refuge Program. Relative stability of the dune system is maintained by the existing hydrologic and wind conditions within the San Luis Valley. Hydrologic conditions in this area are further protected by the Great Sand Dunes Act of 2000 that maintains the surface and ground water rights at the Park.

To assess the status of the species in the foreseeable future, the SSA Report forecasted future conditions for the Great Sand Dunes tiger beetle in terms of resiliency, redundancy, and representation under five plausible future scenarios for the years 2050 and 2100. We chose these years because they correspond to time periods that have been evaluated by the National Park Service and are within the range of the available hydrological and climate change model forecasts by the National Park Service (see Service 2017j, Appendix B). Additionally, because of the short generation time (3 years) of the Great Sand Dunes tiger beetle (Pineda 2002, p. 57), the year 2050 (33 years from now) and the year 2100 (83 years from now) encompass approximately 10 and 30 generations, which is a relatively long time in which to observe effects to the species. Climate change models forecast warmer temperatures, but there is uncertainty regarding whether precipitation will increase or decrease within the range of the Great Sand Dunes tiger beetle, although the overall trend is expected to be increased aridity due to warming temperatures. Our scenarios accounted for the uncertainty regarding future precipitation by including both possible precipitation conditions, as well as a range of levels of future surface disturbances of tiger beetle habitat (Service 2017j, pp. 36–49). Under all five scenarios we expect the subpopulations of Great Sand Dunes tiger beetle to continue to occupy at least the two largest, if not all three, of the dune areas. We anticipate that the future persistence of the Great Sand Dunes tiger beetle will be provided by the continued maintenance of the relatively undisturbed and relatively stable dune system at the Great Sand Dunes.

Finding

In making this finding, we reviewed the best available scientific and commercial information pertaining to the Great Sand Dunes tiger beetle, as summarized in the SSA Report, corresponding to the Act's five threat factors, and we applied the standards within the Act, its implementing regulations, and Service policies.

Because this species occupies the majority of its historical range, with evidence of continued occupancy and very limited impact from stressors across all three dune provinces, we find that the species has a very low risk of extirpation due to stochastic or catastrophic events that could plausibly occur in the future and that, due to these conditions, the species retains adaptive capacity. Therefore, we conclude that the current risk of extinction is low, such that the Great Sand Dunes tiger beetle is not in danger of extinction throughout all of its range.

In addition, because we project continued occupancy and very limited impact from stressors across nearly all of the species' suitable habitat under all five future scenarios, we find that the species has a low future risk of extinction due to stochastic or catastrophic events that could plausibly occur in the future and that, due to these conditions, the species is expected to retain most of its adaptive capacity. Therefore, we conclude that the risk of extinction in the foreseeable future is low, such that the Great Sand Dunes tiger beetle is not likely to become an endangered species within the foreseeable future throughout all of its range.

Having determined that the Great Sand Dunes tiger beetle does not meet the definition of a threatened species or an endangered species, we next considered whether there are any significant portions of the range where the species is in danger of extinction or is likely to become endangered in the foreseeable future. The best available information indicates that the Great Sand Dunes tiger beetle habitat in the playa lakes dunes may have greater vulnerability to potential future stressors. We therefore evaluated whether the playa lakes dunes could be considered ''significant.'' The playa lake dunes provide only 0.67 percent of the total Great Sand Dunes tiger beetle habitat. If all of the Great Sand Dunes tiger beetles within the playa lake dunes were to hypothetically be extirpated, the species would lose a very small amount of representation and redundancy. However, the loss of this portion of the species' range would still leave sufficient resiliency, redundancy, and representation in the remainder of the species' range such that it would not be

expected to increase the vulnerability of the entire species to extinction.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Great Sand Dunes tiger beetle. Because the species is neither in danger of extinction now nor likely to become so in the foreseeable future throughout all or any significant portion of its range, the species does not meet the definition of an endangered species or threatened species. Therefore, we find that listing the Great Sand Dunes tiger beetle as an endangered or threatened species under the Act is not warranted at this time. A detailed discussion of the basis for this finding on the 2007 petition to list the Great Sand Dunes tiger beetle as an endangered or threatened species can be found in the Great Sand Dunes tiger beetle's Species Assessment and Listing Priority Assignment Form, SSA Report, and other supporting documents (available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2017–0068).

Kirtland's Snake (*Clonophis kirtlandii*)

Previous Federal Actions

We first identified the Kirtland's snake as a candidate for listing under the Act in 1982 (47 FR 58454; December 30, 1982) as a category 2 species. At that time, a category 2 candidate species was any species for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not currently available to support a proposed rule to list as an endangered or threatened species. The species remained a category 2 candidate in subsequent Candidate Notices of Review (50 FR 37958, September 18, 1985; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In 1996 (61 FR 7596, February 28, 1996), we discontinued recognition of category 2 candidates in favor of maintaining a list that represented only those species for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as an endangered or threatened species, but for which preparation and publication of a proposal is precluded by higher priority listing actions.

On April 20, 2010, we received a petition, dated April 20, 2010, from the Center, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy (the Petitioners), requesting that we list 404 aquatic, riparian, and wetland species as threatened or endangered species under the Act, including Kirtland's snake. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial scientific information indicating that listing the Kirtland's snake may be warranted.

On June 17, 2014, the Center filed a complaint against the Service (1:14–CV–01021) for failure to complete a 12-month finding for the Kirtland's snake in accordance with statutory deadlines. On September 22, 2014, the Service and the Center filed stipulated settlements in the District of Columbia, agreeing that the Service would submit to the **Federal Register** a 12-month finding for the Kirtland's snake no later than September 30, 2017 (*Ctr. for Biological Diversity* v. *Jewell,* case 1:14–CV–01021–EGS).

Background

The Kirtland's snake is a small, non-venomous snake in the water snake subfamily of the constrictor family. The species occurs close to permanent or seasonal water sources, including wetlands, streams, reservoirs, lakes, and ponds. The Kirtland's snake requires moist-soil environments and spends much of its time underground in or near crayfish burrows. When Kirtland's snake is above ground, it is almost always found under natural or artificial cover objects instead of basking or moving through open areas.

The core of the Kirtland's snake's range includes Illinois, Indiana, Michigan, and Ohio. The species has also been found in three counties in Kentucky, three counties in eastern Missouri, and one county in Tennessee. The status of some Kirtland's snake sites in western Pennsylvania is unknown. The species historically occurred in southern Wisconsin.

We currently consider the species to be extant in 60 counties rangewide, with 43 percent of the historical counties having Kirtland's snake documented within the last 15 years. The species may be experiencing some range contraction in the east and northwest, but recent county records in the north and south have extended the range slightly in those directions.

The Kirtland's snake is notoriously difficult to detect, even with focused survey effort, because they are primarily underground. Negative survey data available for most sites are not rigorous enough to document whether the species is extirpated. Of a total of 415 records of the Kirtland's snake, we determined 194 (47 percent) to be extant and 204 (49 percent) are unknown, primarily due to detection difficulties, lack of survey effort, and uncertainty regarding habitat requirements. We determined 17 records (4 percent) are extirpated.

Summary of Status Review

In making this 12-month finding on the petition, we considered and evaluated the best scientific and commercial information available, and evaluated the potential stressors that could be affecting Kirtland's snake populations. This evaluation includes information from all sources, including Federal, State, tribal, academic, and private entities and the public. The Species Status Assessment (SSA) Report (service 2017k, entire) for the Kirtland's snake summarizes and documents the biological information we assembled, reviewed, and analyzed as the basis for our finding.

We evaluated habitat loss and degradation from urbanization and development (Factor A) as a potential threat to the Kirtland's snake. However, we found that the Kirtland's snake occurs at a number of urban and suburban sites in vacant lots, parks, cemeteries, remnant wetlands, neighborhood yards, railroad rights-of-way, and trash dumps. The Kirtland's snake has persisted in these degraded habitats in seemingly high densities for decades and presumably is capable of reproducing in these otherwise marginal areas.

Collection for the pet trade (Factor B) was also cited by the Petitioners as a potential threat. Six States list the Kirtland's snake as threatened or endangered under State laws, most of which regulate possession of listed species. We do not know to what extent illegal collection may still occur, but there are no data indicating that collection is affecting the species.

We also considered road mortality (Factor E) and snake fungal disease (Factor C) as potential threats. Road-killed Kirtland's snakes have been documented at a number of sites, and three Kirtland's snakes have tested positive for snake fungal disease. However, such incidents are scattered and there are no data indicating that road mortality or snake fungal disease affects the species at a population level.

Additionally, we investigated climate change as a potential threat. One modeling effort found that the Kirtland's snake will see greater changes to the climatic suitability in its range relative to other reptiles in the Great Lakes region. However, this study did not

address how the Kirtland's snake would respond to any changes in climate (for example, changes in temperature or precipitation patterns). There are no data to indicate how the Kirtland's snake is likely to respond to these changes, and we do not understand the habitat needs of the species or why it occurs or persists where it does so there is no basis on which to conclude that the species will decline as a result of changes to climatic suitability.

Finding

We acknowledge that data regarding actual impacts of these stressors on the species is limited; however, the best available scientific and commercial information does not indicate that any of these stressors is occurring to a degree or magnitude that would result in population- or species-level impacts. While information regarding population abundance is limited, the species continues to be found over a wide area, suggesting that the species has at least some redundancy to guard against catastrophic events. Additionally, the species appears to tolerate a variety of habitat conditions and has persisted in degraded areas for decades and, thus, presumably is capable of reproducing in otherwise marginal areas, indicating the species is at least somewhat resilient. The information available regarding future trends of the stressors or the species' response does not allow us to reliably predict changes to the species' status; however, the best available scientific and commercial information does not indicate that these stressors are likely to result in population- or species-level impacts in the foreseeable future.

Further, we found no portions of the Kirtland's snake's range where these stressors are concentrated or substantially greater than in other portions of its range. Therefore, there would not be any significant portions of the species' range where the species could have a higher level of risk than its status throughout all of its range (*i.e.,* be in danger of extinction or likely to become so in the foreseeable future).

Based on this information about resiliency and redundancy, as articulated in more detail in the underlying SSA Report, combined with a lack of operative threats now or in the future, we conclude that the Kirtland's snake is not in danger of extinction nor is it likely to become so in the foreseeable future throughout all or a significant portion of its range. Therefore, we find that listing the Kirtland's snake as an endangered or threatened species under the Act is not warranted at this time. The Kirtland's Snake SSA Report and other supporting documents provide a detailed discussion supporting the basis for this finding (available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2017–0039).

Pacific Walrus (*Odobenus rosmarus ssp. divergens*)

Previous Federal Actions

On February 8, 2008, we received a petition dated February 7, 2008, from the Center, requesting that the Pacific walrus be listed as endangered or threatened under the Act and that critical habitat be designated. The petition included supporting information regarding the species' ecology and habitat use patterns and predicted changes in sea ice habitats and ocean conditions that may impact the Pacific walrus. We acknowledged receipt of the petition in a letter to the Center, dated April 9, 2008. In that letter, we stated that an emergency listing was not warranted and that all remaining available funds in the listing program for Fiscal Year (FY) 2008 had already been allocated to the Service's highest priority listing actions and that no listing funds were available to evaluate the Pacific walrus petition further in FY 2008.

On December 3, 2008, the Center filed a complaint in U.S. District Court for the District of Alaska for declaratory judgment and injunctive relief, challenging the failure of the Service to make a 90-day finding on their petition to list the Pacific walrus, pursuant to section 4(b)(3) of the Endangered Species Act and the Administrative Procedure Act (5 U.S.C. 706(1)). On May 18, 2009, a settlement agreement was approved in the case of *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service, et al.* (3:08–cv–00265–JWS), requiring us to submit our 90-day finding on the petition to the **Federal Register** by September 10, 2009. On September 10, 2009, we made our 90-day finding that the petition presented substantial scientific information indicating that listing the Pacific walrus may be warranted (74 FR 46548). On August 30, 2010, the Court approved an amended settlement agreement requiring us to submit our 12-month finding to the **Federal Register** by January 31, 2011. On February 10, 2011, we published a 12-month petition finding that listing the Pacific walrus as an endangered or threatened species was warranted; however, listing the Pacific walrus was precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants (76 FR 7634). We added the Pacific walrus to the candidate list and assigned it a Listing Priority Number LPN of 9, based on the moderate magnitude and imminence of threats. The Pacific walrus was included in all of our subsequent annual candidate notices of review (76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104; November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016).

On September 9, 2011, the Service entered into two settlement agreements with Guardians and the Center regarding species on the candidate list at that time (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)). The settlement agreement with the Center included a deadline to submit a proposed rule or not-warranted finding to the **Federal Register** for the Pacific walrus by September 30, 2017. This publication fulfills the requirement of the settlement agreement for the Pacific walrus.

Background

The Pacific walrus is one of the largest extant pinnipeds (fin or flipper-footed marine mammals) in the world. The Pacific walrus is identified and managed as a single panmictic population (a population with random mating). The subspecies ranges across the shallow continental shelf waters of the Bering and Chukchi Seas, occasionally moving into the East Siberian Sea and Beaufort Sea. Pacific walruses are highly mobile, and their distribution varies markedly in response to seasonal and interannual variations in sea-ice cover. Pacific walruses undertake seasonal migrations between the Bering and Chukchi Seas and primarily rely on broken pack ice habitat to access offshore breeding and feeding areas.

Most Pacific walruses spend the winter in the Bering Sea. As the Bering Sea ice deteriorates in the spring, adult females, juveniles, and some adult males migrate northward to summer feeding areas over the continental shelf in the Chukchi Sea, where sea ice has historically remained throughout the year. Calves are born each spring during the northward migration. Thousands of adult male Pacific walruses remain in the Bering Sea year round, where they forage from coastal haulouts during ice-free periods. In late September and October, walruses that summered in the Chukchi Sea typically begin moving south in advance of the developing sea ice.

The size of the Pacific walrus population is uncertain. Preliminary

survey results from a mark-recapture survey undertaken by the Service estimate a total population size of 283,213 Pacific walruses with a 95 percent credible interval of 93,000 to 478,975 individuals (Beatty 2017). However, this abundance estimate should be interpreted with extreme caution due to the preliminary nature of the estimate and the low precision estimates in the model.

Summary of Status Review

In making this 12-month finding, we considered and evaluated the best scientific and commercial information available, and evaluated the potential stressors that could be affecting the Pacific walrus. This evaluation includes information from all available sources, including Federal and State entities, Alaska natives, academics, private entities, and the public. The Species Status Assessment Report (SSA Report) (Service 2017l) for the Pacific walrus summarizes and documents the biological information we assembled, reviewed, and analyzed to inform our finding.

We reviewed the potential stressors that could be affecting the Pacific walrus and assessed the viability of the Pacific walrus through an assessment of the resiliency, representation, and redundancy of the Pacific walrus population. Owing to the relatively wide geographic range of the subspecies, individual walruses may be impacted by a variety of stressors; however, concerns about the walrus' status as a whole revolve primarily around the following stressors associated with the effects of climate change: (1) Loss of sea ice; (2) ocean warming; and (3) ocean acidification. We reviewed the following additional stressors in the SSA Report (Service 2017l): Harvest; disease and parasites; predation; contaminants and biotoxins; oil and gas exploration, development, and production; commercial fisheries; and ship and air traffic. Although we acknowledge that these additional stressors may be affecting individual Pacific walruses, the best available information does not show that these activities or stressors are having an impact at the population level; further discussion can be found in the SSA Report (Service 2017l, entire).

We found that the Pacific walrus population appears to possess degrees of resiliency, representation, and redundancy that have allowed it to cope with the changing environments of the last decade. Although changes in resiliency, representation, and redundancy of the subspecies during this time would be difficult to detect for a species with a 15-year generational timeframe, few malnourished or diseased animals are observed, and reproduction is higher than in the 1970s–1980s, when the population was thought to have reached carrying capacity and subsequently declined. Consequently, the current prey base of Pacific walruses appears adequate to meet the energetic and physiological demands of the population. Survival rates are higher than in the 1970s–1980s, and harvest levels have also decreased. These observations mirror those of Alaskan Native hunters, who assert that the population is large and stable; that Pacific walruses are intelligent, adaptable, and able to make the necessary adjustments needed to persist; and that Pacific walruses are not being negatively impacted in a significant way at this time.

In considering the future as it relates to the status of the Pacific walrus, we considered the stressors acting on the species and looked to see if reliable predictions about the status of the species in response to those stressors could be drawn. We considered how far into the future we could reliably predict the extent to which threats might affect the status of the species, recognizing that our ability to make reliable predictions into the future is limited by the variable quantity and quality of the available data about impacts to the Pacific walrus and the response of the Pacific walrus to those impacts.

For the Pacific walrus, the most significant risk factor looking into the future is the effects of climate change (sea-ice loss). While we have high certainty that sea-ice availability will decline as a result of climate change, we have less certainty, particularly further into the future, about the magnitude of effect that climate change will have on the full suite of environmental conditions (*e.g.,* benthic productivity) or how the species will respond to those changes. We find that beyond 2060 the conclusions concerning the impacts of the effects of climate change on the Pacific walrus population are based on speculation, rather than reliable prediction.

Our habitat analysis predicts that shifts in both seasonal distribution and availability of sea-ice habitat will occur across the range of the Pacific walrus. For example, we found that, across seasons and time, ice-accessible habitat will shift northward with the loss of pack ice in the northern areas of the subspecies' range, exposing more land-accessible habitat, especially in the Bering Sea. In winter, we project that ice-accessible habitat will shift from the central Bering Sea in 2015 to the Bering Strait, straddling the southern Chukchi and northern Bering Seas, in 2060. We detected large variations in the trajectories of potential habitat for the Pacific walrus across the Bering Sea and Chukchi Sea area. For example, our results demonstrate increases in potential habitat in spring and winter for both the U.S. and Russia Chukchi Sea areas, yet potential habitat declined dramatically in these areas in summer. Conversely, we predicted notable declines in potential habitat in spring and winter and a stable trajectory in summer. In all seasons, potential habitat in the Russia Bering Sea area varied little.

We relied on monthly projections of sea-ice extent from a 13-model ensemble of the most-recent Global Circulation Models and three Representative Concentration Pathways (RCP) to assess the response of Pacific walruses to changes in the number of ice-free months over time. Pacific walruses currently use sea ice for courtship and breeding from December to March with a core period occurring from January to February. In addition, Pacific walruses currently use sea ice for birthing in the spring from April to June with a core birthing period occurring in May. Furthermore, calves nurse on the sea ice exclusively for 2–4 weeks after birth, and this critical period in post-natal care occurs in May and June. Given our prediction that the areas where the Pacific walruses' occur will, in combination, provide sufficient sea ice to meet the species' breeding, birthing, and denning needs, we found that Pacific walruses habitat needs will be met during the core breeding and birthing portions of the annual cycle under all RCP scenarios out to 2060.

Although Pacific walruses prefer sea ice habitat, they also use land habitat during the summer and fall, but likely not without tradeoffs related to energetic costs and other risks of using coastal haulouts (*e.g.,* trampling events, predation, and disease). Nonetheless, if land habitat proves to be comparable in quality to ice habitat, including access to foraging sites, then it is likely that their habitat needs will be met. If land habitat is inferior to ice habitat for Pacific walruses in summer and fall, then survival and recruitment of Pacific walruses will likely decline and population-level effects would occur. However, while it is likely that the increased use of land habitat will have some negative effects on the population, the magnitude of effect is uncertain given the demonstrated ability of Pacific walruses to change their behavior or adapt to greater use of land.

In our assessment of the Pacific walrus, we considered the future impacts of stressors such as shipping and oil and gas development, along with changes in potential suitable habitat, on the viability of the Pacific walrus population. As previously discussed, we find that beyond 2060 the conclusions concerning the impacts of the effects of climate change and other stressors on the Pacific walrus population are based on speculation, rather than reliable prediction. Therefore, while we included projections out to 2100 in our analysis, we considered 2060 as the foreseeable future timeframe for this analysis. Due to future changes in suitable habitat, coupled with the impacts of the other stressors, we expect that the Pacific walrus's viability will be characterized by lower levels of resiliency and redundancy in the future, but we do not have reliable information showing that the magnitude of this change could be sufficient to put the subspecies in danger of extinction in the foreseeable future. In addition, we expect that representation will remain relatively unchanged.

We evaluated the current range of the Pacific walrus to determine if there is any apparent geographic concentration of potential threats to the taxon. We examined potential threats from loss of sea ice, ocean warming, ocean acidification, energetics, change in habitat use patterns, harvest, disease and parasites, predation, contaminants and biotoxins, oil and gas exploration, development and production, commercial fisheries, and ship and air traffic. We found no portions of its range where potential threats are significantly concentrated or substantially greater than in other portions of its range, and that there was no higher concentration of threats in the Chukchi or the Bering Seas. We did not identify any portions where the species may be in danger of extinction or likely to become so in the foreseeable future. Therefore, no portions warrant further consideration to determine whether the species may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range.

Finding

Our review of the best scientific and commercial information available indicates that the threats affecting the Pacific walrus are not, singly or in combination, of sufficient imminence, intensity, or magnitude that the species is in danger of extinction or is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. We conclude that, while the Pacific walrus will experience a future reduction in availability of sea ice, resulting in reduced resiliency and redundancy, we are unable to reliably predict the magnitude of the effect and the behavioral response of the Pacific walrus to this change, and we therefore do not have reliable information showing that the magnitude of this change could be sufficient to put the subspecies in danger of extinction now or in the foreseeable future. At this time, sufficient resources remain to meet the subspecies' physical and ecological needs now and into the future. Therefore, we find that listing the Pacific walrus as an endangered or threatened species under the Act is not warranted at this time. A detailed discussion of the basis for this finding can be found in the Pacific walrus species-specific assessment form and other supporting documents (available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2017–0069).

San Felipe Gambusia (*Gambusia clarkhubbsi*)

Previous Federal Actions

On June 13, 2005, we received a petition, dated June 10, 2005, from Save Our Springs Alliance requesting that the San Felipe gambusia be listed as an endangered species under the Act. The West Texas Springs Alliance was also listed as a petitioner. On February 13, 2007, we published a 90-day finding (72 FR 6703) in the **Federal Register** that the 2005 petition from Save Our Springs Alliance did not present substantial information indicating that listing may be warranted.

On June 18, 2007, Guardians (which at the time was called ''Forest Guardians'') petitioned the Service to list 475 species in the southwestern United States as endangered or threatened under the Act, including the San Felipe gambusia. On December 16, 2009, the Service published in the **Federal Register** a partial 90-day finding (74 FR 66866) for 192 of the 475 species raised in Guardians' 2007 petition, including the San Felipe gambusia. In that finding, the Service found the 2007 petition presented substantial scientific or commercial information indicating that listing the San Felipe gambusia may be warranted. This 12-month finding satisfies the statutory requirement of section 4(b)(3)(B) of the Act that the Service determine whether or not the San Felipe gambusia warrants listing.

Background

The San Felipe gambusia is a small fish in the family Poeciliidae (order Cyprinodontiformes). It was first discovered in 1997 and described by Dr. Gary Garrett and Dr. Robert Edwards (2003, pp. 783–788) as a species distinct from other gambusia species, including its closest believed relative, the spotfin gambusia (*Gambusia krumholzi*). Garrett and Edwards identified the San Felipe gambusia as a new species only known to occur from San Felipe Creek in Val Verde County, Texas. This distinction between the San Felipe gambusia and spotfin gambusia was based on morphological characteristics, primarily body pigmentation and aspects of the male gonopodium (modified anal fin that allows male fish of the families Anablepidae and Poeciliidae to briefly hook into the vent of a female fish to deposit sperm; Garrett and Edwards 2003, p. 783).

Summary of Status Review

We have evaluated the best scientific and commercial information available, and based on that information we find that the San Felipe gambusia is not a distinct species, but rather the same species as the spotfin gambusia (*Gambusia krumholzi*). This section summarizes the information upon which we base this finding. The best available and most current scientific information indicates that the San Felipe gambusia is a junior synonym of the spotfin gambusia. In this context, a ''junior synonym'' refers to different scientific names for the same species, where the later name given is considered junior. The Service is not considering the spotfin gambusia for listing action at this time.

Echelle *et al.* (2013, p. 72), including as co-authors Dr. Gary Garrett and Dr. Robert Edwards, who first identified San Felipe gambusia as a new species, described the genetic structure and species-level taxonomy of three gambusia species: San Felipe gambusia, spotfin gambusia, and Tex-Mex gambusia (*Gambusia speciosa*). Echelle also reevaluated the morphological characteristics of the San Felipe gambusia and the spotfin gambusia. Echelle's work was published in *Copeia,* a peer-reviewed scientific journal published by The American Society of Ichthyologists and Herpetologists. The American Society of Ichthyologists and Herpetologists, in conjunction with the American Fisheries Society, is recognized as an authority in establishing the taxonomic status of fish.

Echelle *et al.*'s, (2013, p. 77) study assessed variation in mitochondrial DNA and six nuclear microsatellite loci of the San Felipe gambusia and the spotfin gambusia. None of the six microsatellite loci showed fixed

differences between the populations of San Felipe gambusia and spotfin gambusia (Echelle *et al.* 2013, p. 77). In other words, this genetic analysis did not find statistically significant differences between San Felipe gambusia and spotfin gambusia to indicate that they were separate species. Additionally, morphological characteristics that Garrett and Edwards (2003, pp. 738–786) had originally used to describe the San Felipe gambusia were generally subtle, and reevaluation of these characteristics showed no statistically significant variance associated with species-level taxonomy (Echelle *et al.* 2013, p. 77). In other words, in the more recent peer-reviewed evaluation, the body characteristics that had been identified as potentially distinguishing between the San Felipe gambusia and the spotfin gambusia revealed no statistically significant differences to indicate that they were separate species. The only exception to this was degree of body crosshatching in males, which differed in direction, as noted by Garrett and Edwards (2003, p. 785). However, there was broad overlap in crosshatching pattern between the San Felipe gambusia and spotfin gambusia, and the difference was not detected in females (Echelle *et al.* 2013, p. 77). Based on the results of the genetics work and morphological reassessment, Echelle *et al.* (2013, entire) found that the San Felipe gambusia is not a new species, but is a junior synonym of (*i.e.,* the same species as) the more widespread spotfin gambusia, endemic to river systems in Coahuila, Mexico (Echelle *et al.* 2013, p. 77).

Based on our review of the best available scientific and commercial information, the taxonomic entity that is known as the San Felipe gambusia is not a distinct species or subspecies, but rather the same species (a junior synonym) as the spotfin gambusia (Echelle *et al.* 2013, p. 72).

Finding

Under the Act, the term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). Based on the best scientific and commercial information available, the San Felipe gambusia is not itself a species, subspecies, or distinct population segment, as those terms are defined in the Act. Therefore, the San Felipe gambusia is not a listable entity under the Act. We find the San Felipe gambusia is not a valid taxonomic entity, does not meet the definition of a species or subspecies under the Act, and, as a result, cannot warrant listing under the Act.

New Information

We request that you submit any new information concerning the taxonomy, biology, ecology, status of, or stressors to, the 14 Nevada springsnail species, Barbour's map turtle, Bicknell's thrush, Big Blue Springs cave crayfish, Oregon Cascades-California population and Black Hills population of the black-backed woodpecker, eastern DPS of the boreal toad, Northern Rocky Mountains DPS of the fisher, Florida Keys mole skink, Great Sand Dunes tiger beetle, Kirtland's snake, Pacific walrus, and San Felipe gambusia to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and encourage their conservation. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts for these species. If an emergency situation develops for any of these species, we will act to provide immediate protection.

References Cited

Lists of the references cited in the petition findings are available on the Internet at *http://www.regulations.gov* in the dockets listed above in **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Unified Listing Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 15, 2017.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–21352 Filed 10–4–17; 8:45 am]

BILLING CODE 4333–15–P

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Part III

The President

Memorandum of September 25, 2017—Delegation of Authority Under the Consolidated Appropriations Act, 2017

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Presidential Documents

Title 3—

The President

Memorandum of September 25, 2017

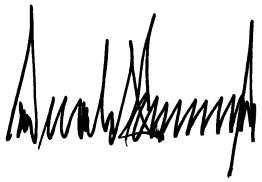
Delegation of Authority Under the Consolidated Appropriations Act, 2017

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 10006 of the Consolidated Appropriations Act, 2017 (Public Law 115–31) (the ''Act'').

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as section 10006 of the Act.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 25, 2017

[FR Doc. 2017–21704
Filed 10–4–17; 11:15 am]
Billing code 4710–10–P

FEDERAL REGISTER

Vol. 82 Thursday,
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Part IV

The President

Proclamation 9651—Honoring the Victims of the Tragedy in Las Vegas, Nevada

Federal Register
Vol. 82, No. 192
Thursday, October 5, 2017

Presidential Documents

Title 3—

The President

Proclamation 9651 of October 2, 2017

Honoring the Victims of the Tragedy in Las Vegas, Nevada

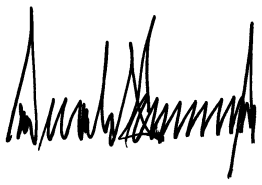
By the President of the United States of America

A Proclamation

Our Nation is heartbroken. We mourn with all whose loved ones were murdered and injured in last night's horrible tragedy in Las Vegas, Nevada. As we grieve, we pray that God may provide comfort and relief to all those suffering.

As a mark of respect for the victims of the senseless act of violence perpetrated on October 1, 2017, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, October 6, 2017. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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